

KAUA'I PLANNING COMMISSION
REGULAR MEETING
January 23, 2018

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Apisa at 9:03 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Donna Apisa
Ms. Kanoe Ahuna
Mr. Roy Ho
Mr. Kimo Keawe
Mr. Wade Lord
Ms. Glenda Nogami Streufert

Absent and Excused:
Mr. Sean Mahoney

The following staff members were present: Planning Department – Director Michael Dahilig, Deputy Director Ka'āina Hull, Chance Bukoski, Dale Cua, Jody Galinato, Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Apisa called the meeting to order at 9:03 a.m.

ROLL CALL

Chair Apisa: Roll call.

Planning Director Michael Dahilig: Commissioner Ahuna.

Ms. Ahuna: Here.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Commissioner Lord.

Mr. Lord: Here.

Mr. Dahilig: Vice Chair Streufert.

Ms. Nogami Streufert: Here.

Mr. Dahilig: Commissioner Mahoney. Commissioner Keawe.

Mr. Keawe: Here.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Here.

Mr. Dahilig: Madame Chair, you have six (6) members present this morning.

APPROVAL OF AGENDA

Mr. Dahilig: The Department would recommend approving the agenda as presented.

Chair Apisa: Do we have a motion to approve the agenda as presented?

Ms. Nogami Streufert: I move that we accept the agenda as presented.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

MINUTES of the meeting(s) of the Planning Commission

Mr. Dahilig: We have no minutes under Item D for approval by the Commission this morning.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: We do have a couple handouts that are meant to supplement the record this morning under Item E. There are additional agency comments for Zoning Amendment ZA-2018-3, as well as two (2) communications relating to Item I.1. under the Kaua'i Springs matter. The Department would recommend receiving these items for the record.

Chair Apisa: A motion to receive?

Ms. Ahuna: Motion to receive the items.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Mr. Dahilig: Thank you, Madame Chair.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

Mr. Dahilig: We are on Item F.1. This is Continued Agency Hearing. We have no continued agency hearings for the Commission this morning.

New Agency Hearing

Class IV Zoning Permit Z-IV-2018-3, Use Permit U-2018-2 and Special Permit SP-2018-2 to allow operation of a Child Care Home facility within an existing residence on a parcel along the southern side of Olohena Road in Wailua Homestead, and Variance Permit V-2018-2 to deviate from the parking standards specified in Section 8-6.3(e) of the Kaua'i County Code (1987) as amended, further identified as 6287D Olohena Road, Tax Map Key: (4) 4-4-009:028, and affecting a portion of a parcel containing 1.166 acres = *Leaps and Bounds Preschool, LLC*. [APPLICATION WITHDRAWN BY APPLICANT.]

Mr. Dahilig: Item F.2.a. This is a new agency hearing. Class IV Zoning Permit Z-IV-2018-3, Use Permit U-2018-2, and Special Permit SP-2018-2 – this is to operate a child care home facility within an existing residence on a parcel located along the southern side of Olohena Road in Wailua Homestead, and Variance Permit V-2018-2 to deviate from the parking standards specified in Section 8-6.3(e) of the Kaua'i County Code (1987) as amended, further identified as 6287D Olohena Road, Tax Map Key: (4) 4-4-009 Parcel 028, and affecting a portion of a parcel containing 1.166 acres. The applicant is Leaps and Bounds Preschool.

Madame Chair, this application has been withdrawn as notified at the last Commission meeting. However, due to notification purposes, we do need to call this agency hearing for any testimony.

Chair Apisa: Is there anyone here to testify on the Class IV Zoning Permit?

Unidentified Speaker: Is that Kōloa Road?

Mr. Dahilig: This is on Leaps and Bounds Preschool. Madame Chair, given no testimony, the Department would recommend moving on to the next agenda item given that this is a withdrawn application.

Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 to allow conversion of an existing single-family residence into an Administrative Office on a parcel located along

the mauka side of Kōloa Road in Lāwa‘i, situated approx. 200 ft. east of the Iwipoo Road/Kōloa Road intersection, further identified as 3691 Kōloa Road, Tax Map Key: (4) 2-5-011:077, and containing a total area of 10,326 sq. ft. = ‘Ohana Home Health, LLC. [Director’s Report in Consent Calendar brought to discussion by two Commissioners 1/9/18, deferred to 1/23/18.]

Mr. Dahilig: This is Item F.2., New Agency Hearing, Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 to allow a conversion of an existing single-family residence into an Administrative Office on a parcel located along the mauka side of Kōloa Road in Lāwa‘i, situated approximately 200 feet east of the Iwipoo Road/Kōloa Road intersection, further identified as 3691 Kōloa Road, Tax Map Key: (4) 2-5-011 Parcel 077, and containing a total area of 10,326 square feet. The applicant is ‘Ohana Home Health, LLC and there was a Director’s Report given to the Commission for this matter.

Madame Chair, the Department would recommend opening the agency hearing at this time.

Chair Apisa: We will go ahead and open the hearing for this item on the ‘Ohana Home Healthcare [*sic*], LLC.

Unidentified Speaker: Should I come up, or no?

Mr. Dahilig: Are you the applicant?

Chair Apisa: Yes, would the applicant please present.

Mr. Dahilig: This is just the hearing for now, so we will call you up later on.

Chair Apisa: Oh. Sorry.

Mr. Dahilig: Madame Chair, given no further testifiers, the Department would recommend making a final call for this agency hearing and close the agency hearing at this time.

Chair Apisa: Final call. Anyone wishing to testify on the ‘Ohana Home Care [*sic*], LLC case? Hearing none, this will be closed.

Ms. Nogami Streufert: I move to close the hearing.

Mr. Keawe: Second.

Chair Apisa: All in favor to close? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0. The agency hearing is closed.

Mr. Dahilig: Thank you, Madame Chair.

Continued Public Hearing

Mr. Dahilig: We are on Item F.3. This is Continued Public Hearing. We do not have any (continued) public hearings for today.

New Public Hearing

Zoning Amendment ZA-2018-3: A bill (No. 2671) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Comprehensive Zoning Ordinance. The proposal amends several sections of the Shoreline Setback Ordinance = Kaua'i County Council.

Mr. Dahilig: Item F.4.a. This is Zoning Amendment ZA-2018-3: a bill, No. 2671, for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance. This is amending several sections of the Shoreline Setback Ordinance. This is a bill that came down from the Kaua'i County Council.

Madame Chair, the Department would recommend opening the public hearing at this time.

Chair Apisa: We will open the public hearing at this time. Thank you for coming forward to testify. State your name for the record.

Ms. Caren Diamond: Aloha. Caren Diamond. I want to say I support the changes to the Shoreline Setback Ordinance that have come before you. I also recognize that more work is needed on the bill, so I support the Department's asking for a deferral on it so that more work can happen on it.

But I also want to take the time to explain, a little bit, what some of the problems are in the Ordinance. Coastal Zone Management is one of those interesting subjects where on the other side of the private development is the public resource; it is for public trust. It is your public responsibility to uphold the public trust and the public trust on the other side of this development is our beaches. What started out as a way to expand the shoreline ordinance to apply to within 500 feet of the shoreline ended up resulting in every development getting an exemption from our shoreline setback laws; not only the County's shoreline setback laws that the County is responsible for, but the State shoreline certification laws. So, this Ordinance really does need to be fixed in a bad way. The County has the authority to do the shoreline setback, but the question of where that setback starts from is the question. It starts from the shoreline, and it is the State's authority to set the shoreline, but the way the Ordinance is right now and the way it's been practiced is you have a landowner set what is called an approximate shoreline, which doesn't really exist. They do it by looking at a Google map, choosing the edge of vegetation, marking that as the edge, and then counting the distance between that as their setback. Basically, it has resulted in giving away of public beaches. The exemptions in this Ordinance needs to be fixed. I certainly recognize that it also needs to be fair so that people who are a couple miles back or doing interior repairs really don't have to get a certified shoreline, but you've had people getting... what has been termed as interior repairs, rebuilding entire houses. Hence we have houses that were built for \$14,000 in 1969 getting \$365,000 worth of repairs even though the ocean washes under that house. Certainly certified shorelines inform the decisions on where people build or rebuild, and if you are going to rebuild a house or if you have a house that is

quite old, you may choose to not keep it a non-conforming house but make it conform and set it back, set it up. But this Ordinance allows for exemptions so that this will go on forever and ever, so I really ask you to pay attention to the details—

Mr. Dahilig: Three (3) minutes, Madame Chair.

Ms. Diamond: –and I thank you for your work on the Ordinance. Thank you.

Chair Apisa: Thank you. Would anyone else like to testify? State your name for the record, please.

Ms. Maka‘ala Ka‘aumoana: Aloha. Happy New Year. I am Maka‘ala Ka‘aumoana. I testify on this item as the Vice Chair of Hui Ho‘omalua i ka ‘Āina.

Ms. Ka‘aumoana read her written testimony for the record (on file with the Planning Department).

Chair Apisa: Thank you. Anyone else wish to testify? Thank you.

Mr. Matthew Schaller: Good morning. My name is Matthew Schaller and I am an architect. I understand the need for the shoreline setback rules. I think when we are dealing with properties that are at or close to the shoreline or close to the ocean level, the Ordinance has very good use and has good merit. The problem is it is enforced 500 feet from the shoreline. I do a lot of work on the north shore, especially in Princeville, and there, all the properties are up on a high cliff and they don't impact the shoreline at all. Yet, we are still required to go through the Shoreline Setback Determination process, even for interior renovations at existing condominiums. This becomes quite tiresome, it is burdensome for the owners, it is time consuming, and I think that there are certain areas of the island like that that should be addressed individually rather than just blanket 500 feet. There are certain areas where if you are up on a rocky bluff, you shouldn't have to go through the long process of getting a Shoreline Setback Determination when you are just doing interior renovations to existing concrete structures. That is basically what I would like to say.

Chair Apisa: Okay, thank you.

Mr. Schaller: Thank you very much.

Chair Apisa: Is there anyone else who would like to testify on this matter?

Mr. Dahilig: Madame Chair, let me recap a little bit concerning this Bill that, for scheduling purposes, will facilitate a department's request to ask for indefinite referral on this matter. The Bill...again, it is Chapter 27 of the Code, but what it also does is it folds in and incorporates, by reference, the scientific information that scientists at the University of Hawai'i have developed as part of our erosion maps around the whole island. We are under contract with the University of Hawai'i to get those maps updated, and we are anticipating that their data is going to come back to us in April sometime. So up until we get that data back from the University of Hawai'i

and rather than trying to facilitate two (2) bills to, one, incorporate the data by reference, as well as take care of the amendments that are coming down from Council, we have had a discussion with the introducers of the Bill and we have come to an agreement that we would hold the Bill until such time as the data comes in from the University of Hawai'i, and we can incorporate the new Shoreline Rate Study as part of (inaudible) this Bill.

So we will do a presentation before the Commission today, but our department would recommend a deferral until we receive the materials from the University and are ready to incorporate that by reference. We don't know exactly the date, but if we could have that with a little bit of flexibility so we can set it when we actually have the information in hand. That would be our recommendation, Madame Chair.

Chair Apisa: Is there any discussion or comments on that? Or can we have a motion to defer?

Ms. Nogami Streufert: Could I ask a question before I do that?

Mr. Dahilig: Yes.

Ms. Nogami Streufert: There are a couple of questions I have on this particular ordinance. When would be the appropriate time to ask those questions?

Mr. Dahilig: So we will do a presentation under New Business for this, so we will still be able to get a discussion going on the Bill.

Chair Apisa: So at this time, we just need a motion to defer.

Ms. Nogami Streufert: I move to defer.

Mr. Lord: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0. The matter will be deferred.

Mr. Dahilig: Thank you, Madame Chair.

Zoning Amendment ZA-2018-4: A bill (No. 2675) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Comprehensive Zoning Ordinance. The proposal amends sections of the Farm Worker Housing Ordinance = Kaua'i County Council.

Mr. Dahilig: We are on Item 4.b. This is Zoning Amendment ZA-2018-4, Bill No. 2675 for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance. This is a proposal that amends sections of the Farm Worker Housing Ordinance. It has been introduced by the County Council.

Madame Chair, the Department would recommend opening the public hearing at this time.

Chair Apisa: We will open the public hearing at this time. Is there anyone here to testify?

Mr. Dahilig: Madame Chair, we do not have anybody signed up to testify on this agenda item. The Department would recommend making a final call for any testimony and closing the public hearing.

Chair Apisa: Final call. Anyone here to testify? Please state your name for the record.

Ms. Susie Woolway: Good morning. Yes, my name is Susie Woolway. I am the owner/administrator for 'Ohana Home Health. But I wanted to make sure...because Dale Cua and Chance have been really supportive in this whole process, but what I wanted to do is they had expressed there were a couple concerns and I want to make sure to address everything because I know there are some neighbors—

Chair Apisa: This is on Farm Worker Housing. We are not quite to 'Ohana Health yet.

Ms. Woolway: Sorry.

Chair Apisa: Thank you. Anyone here to testify on the Farm Worker Housing? Seeing none. The hearing will be closed; public hearing.

Ms. Nogami Streufert: I move to close the hearing.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: We are now on Item 5. This is all remaining public testimony on any other agenda item pursuant to Hawai'i Revised Statutes Section 92. We do not have anybody else signed up to testify on any other agenda item. The Department would recommend making a call for anybody that would like to testify on any other agenda item this morning pursuant to the Sunshine Law.

Chair Apisa: Is there anyone else here who wants to testify pursuant to the Sunshine Law? Seeing none.

Mr. Dahilig: Okay. Thank you, Madame Chair.

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 2/13/18 NONE

Mr. Dahilig: We are now on Item G. This is the Consent Calendar. We do not have any status reports or any Director's Reports for the February 13th meeting.

EXECUTIVE SESSION

Mr. Dahilig: Item H. This is the Executive Session. We do not have anything set for Executive Session today.

GENERAL BUSINESS MATTERS

In the matter of Remand from the Hawai'i Supreme Court for Amended Decision and Order based upon Additional Evidence for CC-2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01, Tax Map Key: (4) 2-8-002: por. 005 = *Kaua'i Springs, Inc.* [Hearing Officer's Report and Recommendation of Contested Case Hearing; Certificate of Service (10/20/17) deferred 11/14/17.]

Mr. Dahilig: We are now on Item I.1. This is in the matter of remand from the Hawai'i Supreme Court for amended Decision and Order based on additional evidence for Contested Case Hearing CC-2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01 at Tax Map Key: (4) 2-8-002, a portion of Parcel 005. Kaua'i Springs is this matter and there is a Hearing Officer's report and recommendation of the Contested Case Hearing that was transmitted to everybody on October 20, 2017. As received for the record by the Commissioners, there were two (2) communications: one from Adam Roversi, Deputy County Attorney from the County of Kaua'i, as well as Benjamin Kudo, Esq. relating to this matter.

I am going to suggest, Madame Chair, that the Commission's attorney address the options concerning this particular agenda item.

Deputy County Attorney Jodi Higuchi Sayegusa: At the last meeting on November 14th, we discussed, at length, the options that were available to the Commission at that time. At the time, the Hearing Officer made his recommendation. This was after the Contested Case was reopened as a result of the Hawai'i Supreme Court remand to clarify the permit denial, particularly with regard to public trust, so it was remanded. The Commission at the time reopened the Contested Case and sent the matter to the Hearing Officer to make evidentiary findings with regard to public trust. So he made his recommendations pursuant to his duty and his instruction by the Commission at the time, but in addition, he also...which he did and he made the recommendations, but he also left open some issues that he suggested be reopened or sent back to him by your instruction, particularly with regard to Native Hawaiian traditional and customary rights. So last meeting, we discussed what to do with that; whether you folks, on that issue, wanted to send it back to the Hearing Officer to go through any...reopen the Contested Case again for that issue or have this Body be able to either receive additional evidentiary evidence

with regard to Native Hawaiian rights and practices, or whether you felt comfortable just deciding on the Hearing Officer's recommendations as a whole or modify it in any way as a whole.

What the parties requested at this time was to...and my understanding based on Adam Roversi's...on behalf of the Department, he submitted this letter on January 22nd. Basically, the request is coming from both parties – the applicant as well as the Planning Department – to defer this matter sixty (60) days, and between now and sixty (60) days when this matter is deferred to, the Department, in addition with the applicant's attorney, will work to address any of the open-ended issues, and then submit a stipulation to supplement the record on those open-ended issues; I assume it is the Native Hawaiian traditional and customary practices. So they are going to endeavor to, within sixty (60) days, address any open-ended issues and then submit it for the record for the Commission. Hopefully, as a result of any stipulation, as well as the Hearing Officer's report and recommendation, you folks will be able to decide, in sixty (60) days, what to do.

Chair Apisa: So at this time, you are recommending a 60-day deferral?

Ms. Higuchi Sayegusa: Yes, upon the stipulation of the parties.

Ms. Ahuna: Will that open to allow for public testimony at that time?

Ms. Higuchi Sayegusa: My read of the Charter and...our rules do allow for public testimony for any decision-making related to a permit, so I would say yes. Under Chapter 92, Sunshine, the public is allowed to testify on any matter that the Commission decides upon.

Mr. Keawe: My understanding was that the Decision and Order had come down and basically, it said that the Planning Commission should approve the application subject to nine (9) conditions.

Ms. Higuchi Sayegusa: Yes.

Mr. Keawe: And what you are saying is that the applicant will be given an opportunity to address some of those nine (9) conditions in sixty (60) days at a hearing at that point, and then, at that point, do we make a decision with regard to handling the Condition No. 9, which was the Planning Commission reopens the hearing in this Contested Case and affirmatively establishes the exercise of Native Hawaiian rights? Is that...

Ms. Higuchi Sayegusa: Yes. I think my read of the stipulation is that they feel they will be able to supplement any open-ended issues that the Hearing Officer left open.

Mr. Keawe: "They" meaning the applicant.

Ms. Higuchi Sayegusa: The applicant. So that is their request.

Mr. Keawe: Okay, so if we defer for sixty (60) days, then the public has an opportunity to testify. Now, is that testimony going to be allowed for all items within this case, or specifically for the ones that we have yet to address?

Ms. Higuchi Sayegusa: I think it is for the matter as a whole, so the permit decision.

Mr. Keawe: So it is the permit as a whole—

Ms. Higuchi Sayegusa: Yes.

Mr. Keawe: —as opposed to the narrow scope of these nine (9) conditions?

Ms. Higuchi Sayegusa: Yes. It is sort of a long procedural history leading to this point, though. Really, the Supreme Court did remand it to the Planning Commission just to clarify the denial because the Supreme Court felt the Commission at the time did not fulfill the public trust duties, and whether there was a weighing of the application to draw upon and use the water resource. So, it is sort of a very long history leading up to this point. I think, though, as a result of the evidentiary hearing, it seems that the Hearing Officer has kind of ruled upon the permit, that the permit would be an approval, so the way it was framed and the way it has led up to this point, it is sort of...I am just trying to say that we should probably, also, view the decision-making in the context of the procedural history. It has sort of been a little broadened at this point.

Mr. Dahilig: I guess, you know, given what the Hearing Officer came back with at the last meeting, he identified gaps in the record. The letter that is coming in from Adam is meant to figure out if there is a way to fill the gaps without actually sending it back to the Hearing Officer. So what, I think, they are asking for is an ability to have that time to come to a stipulation on what that evidence is, add that to the record, as well as have the discussion on the final decision-making within sixty (60) days. So even though they are asking for a 60-day lead out on this, for procedural purposes, it would be helpful from the Commission if there was a deadline to submit the stipulated evidence, as well as any additional Findings of Fact, Conclusions of Law that need to supplement the Hearing Officer's recommendation. I think on top of that, too, what would probably be helpful, as the attorney mentioned, is that public testimony, because this is a decision-making element, has to be received pursuant to Chapter 91, so there will be ample discussion ability. The date that we have right now is...for that Commission meeting would be March 27th. So we would recommend...sitting as Clerk, would recommend the 27th be the date for the return on the matter with March 20th being the submittal deadline for any additional documentation relating to this, unless the Commission wants it earlier.

Ms. Ahuna: So technically, there was uncertainty or questions regarding the response to the public trust doctrine. An answer or response was never provided by the applicant, so we are giving them the time to respond to that.

Mr. Dahilig: What has kind of happened in the litany of...because this case is ten (10) years old—

Ms. Ahuna: Right.

Mr. Dahilig: –and there has been a great deal of change in, I would say, the duties under the Constitution as interpreted by the Supreme Court as to discretionary agencies and what they have to do with the record. So, in as much as we have the Kaua‘i Springs case that comes out concerning public trust duties and documentation regarding water, when it comes to other types of rights, as the attorney is mentioning with respect to cultural and historical practices and that type of documentation under the Pa‘akai case and those types of analyses, that was never a heightened type of standard that needed to be folded in back in 2007. We are now at 2017/2018 – that needs to be in the record now. So what the Hearing Officer is saying is you need to update your record in order to make a constitutionally compliant decision – again. So that is where those elements that the Hearing Officer is raising is saying you need to update your record, essentially.

Ms. Nogami Streufert: Madame Chair. If we reopen public testimony at this point and there are other issues that come up, which is what I think you were trying to get at earlier, do we have the option at that point of sending it back to another Hearing Officer? Or do we have to make a decision as a body at that time?

Ms. Higuchi Sayegusa: I guess, again, I was ineloquently trying to say it is sort of a limited remand, and so if there are continuing issues that are updated and updated, you know, I am not sure if this will ever get done. But the entire reason it initially came back to the Commission was to clarify the permit denial with respect to public trust.

Ms. Nogami Streufert: And cultural issues.

Ms. Higuchi Sayegusa: And now the Hearing Officer did note that, again, there was this outstanding issue that the Hawai‘i Supreme Court has subsequently ruled on that there is also a duty to make an affirmative finding with regard to Native Hawaiian traditional and customary practices, so I think that is the other limited issue to close the loop on.

Ms. Nogami Streufert: So there are just two (2) issues upon which people can add to the public record or to add to the public testimony. Is that correct?

Ms. Higuchi Sayegusa: It is still within the framework of the Contested Case proceeding, and so the Hearing Officer made his report and recommendation, so it is not a reopening, entirely, of the permit, but what you folks will have before you is what to do with the Hearing Officer’s recommendation, in addition to any stipulation/supplement from the record by the parties, so it is really a decision-making issue. The public can testify on the matter, on the next steps of whether to approve the Hearing Officer’s report and recommendation or modify it in any way, but it is not a reopening of the evidentiary portion of the Contested Case at all because it is before you. I mean, you folks...yes, I will just leave it at that.

Ms. Nogami Streufert: Okay, just those two (2) issues.

Ms. Higuchi Sayegusa: Okay.

Mr. Ho: What is the format going to be? It is going to be an open meeting like we have here? Or is it going to be almost like a Contested Case hearing?

Ms. Higuchi Sayegusa: Because it is decision-making, it will be on the regular agenda.

Mr. Ho: And, to get back to what is going to happen, we are going to focus the questions only on the items that were presented to us here; the nine (9)...

Ms. Higuchi Sayegusa: Well, it is...essentially, you folks have to decide on what to do with the report and recommendation by the Hearing Officer. He did recommend nine (9) particular recommendations within the Decision and Order.

Mr. Ho: That is the scope of the question and answer?

Ms. Higuchi Sayegusa: Yes.

Mr. Keawe: Madame Chair. So if we, during the next meeting, address all of those nine (9) issues, including the pa‘akai rights, and at that point we still have the option to forward it back or send it back to the Hearing Officer for additional...if we are not satisfied with what we get – basically what I am saying – do we have the option to send it back to him for further clarification?

Ms. Higuchi Sayegusa: Yes.

Mr. Keawe: Okay.

Chair Apisa: Any further discussion on it? Is there a motion to take action?

Ms. Nogami Streufert: I move that we defer this action on Kaua‘i Springs to the–

Unidentified Speaker: Whoa, whoa. If you defer, we can’t testify.

Chair Apisa: I will go ahead and allow public testimony if you would like to testify. We had made a call for final testimony, but we will go ahead and allow that.

Ms. Tessie Kinnaman: Good morning. Aloha, Commissioners. Tessie Kinnaman for the record. How this came about is that – as far as the permits – the applicant came in in 2006, I think, seeking three (3) after-the-fact permits, as you can see in your Decision and Order, if you read the whole thing. I would liken that to being spot zoning because it is an Open/Ag Zone, and without the bottling operation, these permits should not be allowed because of the public resource trust.

The public trust prescribes a higher level of scrutiny to private, commercial users. Hawai‘i decision-makers must, therefore, closely examine requests to use public resource for private gain to ensure the public’s interest in the resource is fully protected. Moreover, permit applications have the burden of justifying the proposed uses in light to protect the public rights and resource.

Agencies may compromise public rights and resource pursuant to decisions made with a level of openness, diligence, and foresight commensurate the higher priorities these rights command under the laws of our State. For example, the Supreme Court ruled that the public trust requires that agencies do more than simply impose requirements and conditions. They also have an obligation to ensure that the prescribed measures are actually being implemented after the total assessment of the possible adverse effects on the State's natural resources. Decision-makers often arise in context of permit or other applications that may impact streams, springs, groundwater, or traditional customary gathering practices. The public trust provides independent authority to guide decision-makers in fulfilling the mandates. For example, in examining the interplay between constitutional public trust and an agency's enabling statute, the Supreme Court explained that the Code and its implementing agency, the Commission, do not override the public trust doctrine or render it superfluous. Even with the enactment in any future development of the Code, the doctrine continues to inform the (inaudible) interpretation, define its permissible outer limits, and justifies its existence. To this end, although we regard the public trust "as sharing similar core principles, behold that the Code does not supplant the protections of the public trust doctrine." In addition, the Supreme Court recently highlighted six (6) principles that agencies must apply to fulfill their mandates and appropriately consider the public trust. One, the agencies' duty and authority is to maintain the purity and flow of our waters for future generations to assure that the waters of our land are put to reasonable and beneficial uses. Two, agencies must determine whether the proposed use is consistent with the trust purposes.

Mr. Dahilig: Three (3) minutes, Madame Chair.

Ms. Kinnaman: May I come back for another three (3)?

Chair Apisa: (Can) you wrap it up fairly quickly?

Ms. Kinnaman: Agencies need to apply presumption in favor of public use, access, enjoyment, (and) resource protections. Agencies must evaluate each proposal for use on a case-by-case basis, recognizing there can be no vested rights in the use of public water. If the requested use is private or commercial, the agency should apply a higher level of scrutiny. And agencies must apply a reasonable and beneficial use standard, which requires an examination of the proposed use in relation to other public and private uses.

Chair Apisa: Okay, thank you.

Ms. Kinnaman: A little bit more, but thank you.

Chair Apisa: Any questions? Okay, thank you.

Ms. Ka'aumoana: Aloha. I am Maka'ala Ka'aumoana, vice chair of Hui Ho'omalua i ka 'Āina, and I would like to begin by noting that it is in a cultural context that we always speak in context, so if you have requested us to speak before an item is before you, before you have begun any discussion, that is the exact opposite of the cultural practice and tradition of this place.

Ms. Ka'aumoana read her written testimony for the record (on file with the Planning Department).

Mr. Dahilig: Three (3) minutes, Madame Chair.

Ms. Ka'aumoana: I will provide the remainder of my testimony in writing. Mahalo. Any questions?

Chair Apisa: Thank you. Anyone else wish to testify? Hearing none.

Ms. Nogami Streufert: I move to set the discussion on possible decision-making on March 27, 2018, with all briefs of stipulations due by March 20, 2018.

Mr. Ho: Second.

Chair Apisa: We have a motion on the floor to defer this to March 27, with March 20 (as) the deadline for submittal. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Mr. Dahilig: Thank you, Madame Chair.

Petition to Appeal the Shoreline Setback Determination, SSD-2018-22, for real property situated at 5-6608 Kūhiō Highway, Wainiha, Kaua'i, Hawai'i, identified as Tax Map Key 5-8-006:022 = Victoria Leadley [Deferred 1/14/18.]

Mr. Dahilig: We are now on Item I.2. This is petition to appeal the Shoreline Setback Determination SSD-2018-22 for real property situated at 5-6608 Kūhiō Highway, in Wainiha, Hawai'i, identified as Tax Map Key 5-8-006 Parcel 022, and the applicant was Victoria Leadley. This was deferred...and that should be 1/14/18 concerning this matter due to a letter from Caren Diamond and Barbara Robeson asking for an appeal at that time. Subsequent to that, the Commission has been transmitted, as part of this agenda item, a letter from Ms. Robeson and Ms. Diamond withdrawing their appeal to the Shoreline Setback Determination.

Madame Chair, the Department would recommend receiving the letter for the record, and because...maybe the attorney can weigh in on procedure. Because no appeal was actually started, no further action other than just to receive the letter for the record, right?

Ms. Higuchi Sayegusa: Yes, that is correct. We just deferred the determination of, basically, standing under the CZO, so we didn't set it for any hearing or Contested Case at that time.

Mr. Keawe: I move to receive for the record.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0 to receive the letter for the record.

Mr. Dahilig: Thank you, Madame Chair.

Request for Extension of Time and Amendment of Condition 1 of Special Management Area Use Permit SMA(U)-2014-5 = *Katherine A. Weir, Trustee of the Katherine A. Weir Revocable Trust; Randall Sinclair Weir and Laura Gail Weir, Trustees of the Randall Sinclair Weir Revocable Trust; and Judith A. Cook.*

Mr. Dahilig: We are now on Item I.3. This is a request for an extension of time and amendment of Condition 1 of Special Management Area Use Permit SMA(U)-2014-5. The applicants are Weir, et al. There is a Director's Report pertaining to the matter and Jody will present the report on behalf of the Department.

Ms. Jody Galinato: Good morning, Madame Chair and members of the Commission.

Ms. Galinato read the Project Description and Use, Additional Findings/Background, and the Preliminary Evaluation sections of the Director's Report for the record (on file with the Planning Department).

Ms. Galinato: I will hold off on the Preliminary Conclusion.

Chair Apisa: Is the applicant present?

Mr. Max Graham: Good morning, Planning Commission members. I am Max Graham. I represent the owners of the property. This is Pākalā Lot A, which is just west of the Makaweli Post Office on the makai side of the road. It contains 8+ acres – 8.332 acres. It is owned by the Weir family members and they are the children of Jean Weir, who is the daughter of Sinclair Robinson, so it is all for family use. A three-unit condominium project has been established on this property. The shoreline is adjacent to the Makaweli Landing and it is an accreting shoreline, meaning that the beach continues to grow in front of the property. The applicants received an approval of an SMA Permit for the construction of two (2) additional dwellings on the property; there is already an old dwelling that is used. There will be one (1) dwelling on each of the CPR units for the family members. The proposed house on Unit C for Katherine Weir is ready to go if we can get Building Permit approval; the building plans have been submitted. But we do need a little additional time to complete that process, and then the proposed house on Unit C will come in for approval this year, so we are asking for time until the end of this year, 12/31/18, to complete the...substantially commence the development of the two additional (2) units.

I wanted to clarify one thing. In the original SMA Permit approval, there was a Paragraph 13 that required the applicant to comply with the Shoreline Setback Ordinance at the time of application, and my understanding – I participated in that hearing – my understanding was that what that meant was at the time of application of building permits for the units as they came in, and I just wanted the Planning Commission to clarify that that was the intent. It didn't mean that compliance was necessary at the time of the application of the SMA Permit, which, in my mind, clearly was not the...there was no intent that there should be compliance prior to the application being filed. So with that clarification, I think that will resolve the issues. Thank you very much.

Chair Apisa: Any questions from the Commissioners? Thank you. Oh, one (1) question.

Mr. Ho: Mr. Graham, this is your third asking for...second.

Mr. Graham: Second, yes.

Mr. Ho: Second asking for an extension, and this is for one (1) year to...

Mr. Graham: Just until the end of this year. We understand this is the final extension.

Chair Apisa: Any other questions?

Ms. Nogami Streufert: Yes. On the original permit, there was supposed to be a plot plan with the view planes that would be noted.

Mr. Graham: Yes, that is the Condition No. 1. I think that is incorporated in the site plan for the construction of the home on Unit C, which is the next one up, and there would have to be a similar showing for the new home on Unit A, and to the extent any additional...the Planning Department wants any additional clarification, the applicant will be happy to provide further plot plans. Now would be the appropriate time because this is building permit approval, so the Planning Department still has to review the building permit application and approve.

Ms. Nogami Streufert: Thank you.

Chair Apisa: Any other questions from Commissioners? Thank you, Max.

Mr. Graham: Thank you very much.

Chair Apisa: The recommendation from the Department.

Ms. Galinato: Sure. Based on the foregoing conclusion, it is recommended that the extension of time be approved extending the deadline to December 31, 2018. There will be no further time extensions considered after this date. Additionally, we would want to delete Condition No. 1 on the extension of time requiring the shoreline certification.

Chair Apisa: Commissioners, do we have a motion or any discussion?

Ms. Nogami Streufer: I move to accept the Planning— I'm sorry.

Mr. Lord: Just had a quick question. So the motion [*sic*] to delete Condition No. 1 is based on...that the proposed house sites are outside of the shoreline setback.

Ms. Galinato: Yes.

Mr. Lord: Okay, thank you.

Ms. Nogami Streufert: I move that we accept the Director's Report for the applicant's request for an extension of time and amendment to Condition No. 1.

Mr. Keawe: Second.

Chair Apisa: Okay. We have a motion--

Ms. Nogami Streufert: I'm sorry. To the end of December 2018.

Chair Apisa: December 31. We have a motion and a second. Any discussion on it? All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Forfeiture of Non-Conforming Use Certificate TVNCU #4308 (Ginger Beach House), Elizabeth Kendrick (Ginger Beach House LLC), for failure to Timely Renew, Tax Map Key (4) 48007002, Anahola, Kaua'i, received on January 3, 2018, to a Hearings Officer (Contested Case Hearing No. CC-2018-1); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal = Elizabeth Kendrick and Joe Chaulkin.

Mr. Dahilig: We are on Item I.4. This is Clerk of the Commission's recommendation to refer an appeal of the Planning Director's decision related to the forfeiture of Non-Conforming Use Certificate TVNCU #4308, known as Ginger Beach House, Elizabeth Kendrick (Ginger Beach House LLC), for failure to timely renew, Tax Map Key (4) 48007002 in Anahola, Kaua'i, received on January 3, 2018, send that to a Hearing Officer to be assigned Contested Case Hearing No. CC-2018-1. It is a request from the Clerk to request for delegation of authority to procure and appoint a Hearing Officer on behalf of the Commission for the instant appeal. There is also an amended Notice of Appeal that was submitted on 1/16/18. The memorandum is before the Commission for your entertainment, and the recommendation would be to approve.

Chair Apisa: Approve to receive and send to a Hearing Officer.

Mr. Dahilig: For giving delegation of authority to the Clerk of the Commission to send it to a Hearing Officer.

Chair Apisa: Any discussion or a motion on this? The Department's recommendation is to (give) delegation of authority to the Clerk of the Commission to procure and appoint a Hearing Officer on behalf of the Commission for the instant appeal; Elizabeth Kendrick and Joe Chaulkin.

Ms. Ahuna: I make a motion to appoint a Hearing Officer for the Commission for the instant appeal of Elizabeth Kendrick and Joe Chaulkin.

Chair Apisa: Do I have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair. Maui Asphalt looks like it may be a bit of a discussion, so it may be appropriate at this time to take a caption break.

Chair Apisa: Right. I would take a ten-minute break.

The Commission recessed this portion of the meeting at 10:00 a.m.

The Commission reconvened this portion of the meeting at 10:13 a.m.

Chair Apisa: Call the meeting back to order.

Petition to Modify Condition Nos. 1 and 2 of Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4; Exhibit List; Exhibit "A" = Maui Asphalt X-IV, LLC. [Deferred 1/9/18]

Mr. Dahilig: Madame Chair, we are on Item 5. This is a petition to modify Condition Nos. 1 and 2 of Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4. This is Maui Asphalt X-IV, LLC. The matter was deferred 1/9/18, and (there is) a Supplemental No. 1, Director's Report pertaining to this matter.

Just as a reminder to the Commissioners, there was a deferral to have additional information submitted to the Commission concerning emissions given the testimony of the Vice Principal from Waimea Canyon Middle School, so Dale will be presenting the supplemental item for the Commission's entertainment.

Mr. Dale Cua: Good morning, Madame Chair and members of the Commission. As the Director noted, this matter was deferred from the last Commission meeting on January 9th. Attached to the Supplemental Report is a copy of the test report dated November 20 and 21, 2017, which is a copy of the Air Quality test report for testing done on the subject property. It was provided by the applicant for your use and review.

Chair Apisa: Thank you. Is the applicant present?

Ms. Lorna Nishimitsu: Good morning, Commissioners. Lorna Nishimitsu on behalf of Maui Asphalt, and I am accompanied by Harry Johnson, who is with the company AQIS that prepared the most recent air quality report for the Waimea property, and Erik Rhinelander, who is with Maui Asphalt. When we last left it off, there were two (2) issues, I guess, that the Commission had been wrestling with; one of which was, what is the air quality when this plant operates, and secondly, because we had represented that there was going to be a site inspection of an alternate location in Anahola, we have Mr. Rhinelander who will explain to you about the results of that

site inspection. Mr. Johnson has to catch a twelve o'clock flight so I will put him on first to do an explanation of the report he prepared.

Chair Apisa: Thank you.

Mr. Harry Johnson: Yes, hi. Harry Johnson, Air Quality Instrumentation and Services. As he stated earlier, November 20th and 21st – we did perform a source test on the asphalt plant, and it did meet the requirements and the limitations that are put in the permit by the State of Hawai'i and also the EPA as far as the particulate matter and visible emissions go. The results are contained in page 1, in the Table 1.1, Summary of Results.

Chair Apisa: Alright, thank you. Anything further?

Ms. Nishimitsu: I am not sure whether the Commissioners have questions about how the test is run, what it measures, and my understanding is it is particulates, not level of odors or scents. Mr. Johnson...I would like him to be able to explain to you, to assure you that it meets State Health requirements.

Chair Apisa: Okay. We will open it up to questions.

Mr. Ho: Mr. Johnson?

Mr. Johnson: Yes.

Mr. Ho: Mr. Johnson, where were these tests taken?

Mr. Johnson: They were taken at the facility in Waimea that they have set up over there and from the exhaust of the bag house; the control equipment that is there to clean up the gases coming out of the mixer.

Mr. Ho: Did you do a radius around the plant? Take test samples there?

Mr. Johnson: Actually, no. The test is requiring us to sample the exhaust gases that come off of the process, and those gases are pushed through a bag house collector, like a filter, and we test the outlet of that filter to make sure that it is doing its job.

Mr. Ho: From your test results, can you tell us what you found? Is it dangerous? Not dangerous? Acceptable?

Mr. Johnson: Well, it is in compliance with the State permit requirements. As you can see in Table 1 here, the permit limit, on the right hand side, of 0.04 grains per dry standard cubic feet, which are the units that these are measured in, the result was 0.02, so half of the allowed emissions. And then the other parameter, VE, visible emissions, is a visual record of what came out, and what we saw there was a quarter of the limit, like a five percent (5%).

Mr. Ho: Is this with the suppressant? Is the suppressant in at this testing?

Mr. Erik Rhinelanders: The suppressant...he is testing air quality, particulate matter, which is regulated by the EPA and the DOH. It is the particulate matter that poses a health risk; that is why it is regulated. The odor issue is completely separate. It is non-hazardous, but it is a nuisance. At the time of this test, we did not have that suppressant in. So it is two (2) different things; you are talking odor and then you are talking hazardous emissions. He is saying that the emissions from the plant are not...it meets the EPA and the DOH regulations, so it is not hazardous. It is the odor that is causing the issue with the school.

Mr. Ho: Thank you.

Ms. Nogami Streufert: So where does the odor come from? I mean, if the odor is not particulates, what is the (inaudible)?

Mr. Rhinelanders: Oh, sorry, it comes from the liquid asphalt itself. It is a petroleum product.

Ms. Nogami Streufert: So it is a particulate that is in there that is making the odor because what you are measuring here is...what you are measuring, as I understand it from your reports, you are measuring oxygen, carbon dioxide, and particulate matters. Okay. Oxygen and carbon dioxide do not have any odor, per se, so it is only the particulate matters, so there are particulates that are going out.

Mr. Rhinelanders: What makes the asphalt smell – there is some sulfur in it. It is asphalt (inaudible), and it is the sulfur that usually harbors the odor; that is why we were initially using a product from the west coast that was less odorous than the local product that we are using (inaudible). Basically, we didn't have any complaints up until October; we have been running from 2015. The only change that we made during that time was switch asphalt, so that is why–

Ms. Nogami Streufert: Switch asphalt–

Mr. Rhinelanders: Supplier, asphalt supplier.

Ms. Nogami Streufert: Okay. Odor, in and of itself, as was mentioned earlier, is not necessarily an indicator of either toxicity or non-toxicity, and it is just...it is tangential, but it can mean something. Just because you have an odor suppressant, so you can't smell it, does not mean that the particulates are not out there.

Mr. Rhinelanders: But we are in compliance with the DOH and the EPA, which regulate particulates that are harmful to the public.

Ms. Nogami Streufert: And you are measuring it at the–

Mr. Rhinelanders: At the source. The most potent is the exhaust, so basically, the bag house is like a big vacuum cleaner. It sucks all the exhaust, air, and dust, and it traps it and it cleans the air before it goes out the stack. So we are testing it at the highest concentration at the source right at the stack.

Ms. Nogami Streufert: So what were the students and the faculty members getting sick from, as they stated?

Mr. Rhineland: I can't answer that. There is an odor. We understand that asphalt does smell. So on our part, we are already trying to change the asphalt to a less odorous asphalt. We tried the suppressant, which is more like a masking, and then we are even looking into another product that removes the odor before it becomes (inaudible).

Ms. Nogami Streufert: Is there a possibility of using a more sensitive filter for the particulates so that there are less of the particulates in the air? Is that a possibility?

Mr. Rhineland: Harry is more on the particulate side.

Mr. Johnson: I think we are confusing particulate like an aerosol mist. The smell is coming from the vapor of the petroleum product—

Mr. Rhineland: The asphalt itself.

Mr. Johnson: —which is not regulated by the Department of Health as a parameter to be tested. They know and the EPA knows that particulate matter is what causes actual health issues and health risk; whereas, the smell of the vapor coming off of that petroleum product does not necessarily create a health risk. It does raise people's awareness or fears; you know, they smell it and they think oh, something smells here so there must be a problem, or I don't feel good after smelling that. But the chances of that being an actual health risk are...well, to be determined by a doctor or somebody like that.

Ms. Ahuna: I have a question. Can you identify, like, where exactly — I mean, I know the map is here — but where exactly is your batch plant in location to the school?

Ms. Nishimitsu: The school is approximately 1 mile away from the operation, and whether or not odors are carried to the school is dependent upon the winds.

You weren't here at the last hearing, but when Maui Asphalt first started operating, they were using the product from the mainland. There were no odor complaints during that time. A local supplier approached Maui Asphalt and said, essentially, well you should use local, buy local. When they switched to the local product in the Fall of 2017, that is when the odor complaints started to come in. Because of the odor complaints, Maui Asphalt decided that they would cease buying the local product and go back to purchasing the mainland product, which, because of the refining process, didn't generate as much odor. The mainland product has arrived on island, but they are pushing through the local product until it is gone and then will replace it with the mainland product. For this week, work is at night, so the school kids should not have any impact. Shortly, Maui Asphalt will be commencing work for the youth drug facility; that work will have to be during the daytime. But at that time, the mainland product should be pretty much fully in use, so they don't anticipate that there will be the kind of problems that has affected the children. The other thing is that they began using odor suppressants last year. When the State Department of Health representatives went to inspect the plant, they commented to the

client...they said, "What's that sweet smell?" So from their perspective, it seems like the odor suppressant was working. Now, the Vice Principal from Waimea Canyon said, well, it is only because the people who work at the plant all the time, they are so immune to the odors, they couldn't detect the odors, but the State Health representatives don't work at the plant and they wouldn't be as immunized to the odors as would, perhaps, Mr. Lingaton, who actually has to pick up the product and make sure it gets to the jobsite to be laid on roadways. I guess what I am trying to illustrate is that Maui Asphalt has been highly responsive to complaints. Well, first of all, maybe they shouldn't have gone with the local product; that seems to be when the problem occurred. But they are trying to rectify all of these and because of jobs that are coming up, they need an extension to remain onsite.

Now, Mr. Rhinelander can explain to you what the results of looking at the Anahola Department of Hawaiian Home sites location, what the end result of that was because after the last hearing, they headed out to Anahola. They would have preferred being in a more centralized location because now the Kaumuali'i resurfacing is completed, it would be ideal to be more centrally located. But if that ends your questions about air quality versus odors, I can turn it over to Mr. Rhinelander to explain.

Ms. Ahuna: I am confused now. I have a question. So now the Anahola batch plant has been permitted or approved?

Ms. Nishimitsu: No, they were looking at an alternate site.

Ms. Ahuna: Oh, okay. So since 2015, you guys (have) been at this site here?

Mr. Rhinelander: Yes.

Ms. Ahuna: And no Anahola has taken place, correct?

Mr. Ho: Just curious, are your plant workers required to wear a mask?

Mr. Rhinelander: No, they aren't.

Mr. Ho: No mask?

Mr. Rhinelander: No mask.

Mr. Lord: I have a question. The batch plant appears to be downwind from the school on prevailing winds, so I assume that these odors are traveling with the wind.

Mr. Rhinelander: Yes.

Mr. Lord: So in a normal prevailing wind, they would be moving towards Kekaha. Is that correct? That is what my little arrow says on the map here. Okay. So the problems occurred, then, on those days when the winds were variable or blowing Kona?

Mr. Rhinelanders: Towards the school.

Mr. Lord: Okay. And then I saw some testimony regarding multiple projects that you are working on around the island, both for the State and the County. Is it your intent to use this batch plant location to serve those projects? Or would you be looking to site batch plants closer to the projects?

Mr. Rhinelanders: We would like to come closer, but the problem is finding a site large enough and going through the whole permit process.

Mr. Lord: Because it looks like, here, your closest neighbors are about 1,556 feet away. Is that correct?

Mr. Rhinelanders: Kekaha is probably the closest.

Mr. Lord: Yes, the Kekaha homes are about a half-mile away it looks like.

Mr. Rhinelanders: Correct.

Mr. Lord: Okay, thank you.

Ms. Ahuna: I remember when that Anahola...(where) that proposed site was, and it was more in reference to water quality as well. So does that propose a threat to the neighboring area? Not only air quality, but water as well, in reference to a batch-

Mr. Rhinelanders: We are required to...it is called "Best Management Practices" where we actually have to, basically, keep everything within our site, within that area, and we have to make sure that nothing from the site leaves, and when we are done with the site, basically restore it back to original.

Ms. Ahuna: What about water seepage and all of that, too?

Mr. Rhinelanders: The site is basically bermed around, so nothing leaves the site; it is fully contained.

Ms. Ahuna: Is this on Hawaiian homes property as well?

Mr. Rhinelanders: Oh no, Kikiaola. We are at...

Mr. Keawe: I've got a couple questions. Mr. Johnson, your commission was to, basically, make sure that whatever was coming out of that plant was compliant with the Hawai'i State and EPA regulations?

Mr. Johnson: Yes, sir.

Mr. Keawe: And so your results in November basically showed that they were well-below the EPA standards?

Mr. Johnson: Yes, sir; half of the standard.

Mr. Keawe: Okay. But as you mentioned, the two (2) issues are different; one is the EPA emission standard and the other is the smell. They, obviously, are related in some respect, but the issue we are talking about is the smell because the testimony from the last meeting was it wasn't an issue – you guys have been doing this since 2015 – until you changed product. But we still don't know, I think for Commissioner Streufert's question, about the product itself, the suppressant, and if there are particles within that that caused whatever, but we don't know because there is no way of measuring that, Mr. Johnson?

Mr. Johnson: Well, it is sub-particulate. It is aerosol–

Mr. Keawe: Right.

Mr. Johnson: –that is causing that odor. It is like on a molecular level of particulate, not a measurable particulate that these methods can measure. It is more like an aerosol or a fume off of a petroleum product that...just like you could smell gas when you put it in your car. It is not a particulate as much as it is a molecule that is on a molecular level, like a sub-particulate size.

Mr. Keawe: Yes, so much more difficult to–

Mr. Johnson: Yes.

Mr. Keawe: –to capture.

Ms. Ahuna: And your report has been shared with the school already?

Mr. Johnson: The report was submitted to the Department of Health and the EPA upon the deadline which was this past Friday, and the report was shared, prior to that, with–

Ms. Ahuna: The complainant, like, or with the school.

Mr. Johnson: Well, with Maui Asphalt. I don't know...

Mr. Rhinelander: We have no issue...we can share with the school. We have no...

Mr. Johnson: It is a public record, too, so they can have access to (inaudible).

Mr. Keawe: Yes, public record and sharing is two (2) different things. The issue before us now is the safety of those children, and I would assume that you wanted to be good neighbors. Is there a go-to person in your organization that is working with the school?

Mr. Rhinelander: Mike Lingaton.

Mr. Keawe: Okay. Can that Vice Principal call?

Mr. Rhineland: Yes.

Mr. Keawe: And basically say we have a problem, can you guys come over, and you will respond? Because the last time he was here, he basically said I don't have a problem at night, you guys can do all the stuff at night, but during the day, when you have Kona winds, you are going to have problems. Your assumption is that if we go back to the mainland product, we are not going to have any problems like we had in 2015. Is that correct?

Mr. Rhineland: Yes.

Mr. Keawe: But we still don't know because you are not going to use that product until you move to the next job.

Chair Apisa: And when will that be?

Mr. Rhineland: We (are) talking...Mike, what do you...couple weeks we should, or...? Basically, we have a tank of the old stuff that we need to run through and then we have that new asphalt coming. But in addition to the new asphalt, we have the suppressant and we are looking at another product that will remove the odors.

Mr. Dahilig: When you say "new", you mean mainland or local?

Mr. Rhineland: No, I mean the mainland product.

Mr. Dahilig: Okay.

Mr. Rhineland: Yes. It is on-island; there are six (6) tanks of it. We just have to...basically, we just have to finish off the local product that we were using.

Chair Apisa: And it is the same new, old product that you were using originally?

Mr. Rhineland: It was the original product that we were using (inaudible).

Chair Apisa: Right, so it is not really a "new" product. It is going back to the original.

Mr. Dahilig: It is probably better, instead of using "old" or "new", say "mainland product" or "local product" because I think right now there is—

Chair Apisa: Because there are only two.

Mr. Rhineland: Yes.

Mr. Dahilig: I think that is where the confusion is right now, is whether or not you are bringing in—

Chair Apisa: Another new product.

Mr. Dahilig: The old new or the new new or the old new or new old, right? I mean...

Mr. Rhinelander: The mainland product.

Mr. Lord: Would you be willing to not operate the plant during days of Kona winds when you are running the local product?

Mr. Rhinelander: We are not going to run the local product because we are at nights now, so we should finish it off during the night work.

Mr. Lord: Okay. So all the local product will be done at night?

Mr. Rhinelander: Yes.

Mr. Lord: Okay.

Mr. Rhinelander: Mike brought the school out with the Clear Air Branch. They did a tour of the plant, so they have been in communication. As soon as we introduce the new product, they can come down—

Mr. Dahilig: The mainland product.

Chair Apisa: The mainland product.

Mr. Rhinelander: The mainland product – sorry – the mainland product, yes. We will still use the suppressant, which is the vanilla smelling. We found out that that is more of a masking. There is another product that takes it a step further and tries to actually remove some of the odor, so we are looking at using that, too.

Mr. Dahilig: And if you could just...for the Commissioners' information, can you just articulate the air sampling protocols? Whether or not this is just a normal course of requirement based on DOH and EPA standards, or this was because of a complaint that was generated.

Mr. Rhinelander: It is a requirement that we need to provide for the—

Mr. Dahilig: Is this annual? Biannual? Monthly?

Mr. Johnson: It is an annual requirement; however, in Hawai'i, if you pass by a wide margin, you are able to ask for a waiver the following two (2) years. Therefore, it makes it like a triannual test as long as you are able to demonstrate compliance.

Mr. Dahilig: Okay, and for the purposes of this particular permit, however, Lorna, is your client amenable to having more periodic tests as it relates to air sampling?

Mr. Johnson: Oh.

Mr. Dahilig: Notwithstanding the DOH requirements, is your client amenable to—

Mr. Johnson: Like a voluntarily testing each year?

Mr. Dahilig: For the purposes of this permit; whether it be this year, every year, or even on a shorter periodic timetable.

Mr. Johnson: I mean, obviously I can't speak for them.

Mr. Rhineland: We would be willing. I mean, like I said, we feel that it is regulated, and the technology with the plant – everything is about emission control. Even on the odor stuff, we are willing to take steps to help minimize that, so yes, we are willing.

Ms. Nogami Streufert: I have a question on it. You are only looking at two (2) emissions right now and that is oxygen and carbon dioxide.

Mr. Rhineland: And particulates.

Ms. Nogami Streufert: And particulates.

Mr. Johnson: Yes. Actually, the oxygen and carbon dioxide aren't really the emissions as...well, I mean, they are emissions, they are not pollutants. The pollutants that we are looking for are particulate—

Ms. Nogami Streufert: Are just the particulates.

Mr. Johnson: —and the visible emission.

Ms. Nogami Streufert: Right.

Mr. Johnson: The oxygen and the CO₂ are used to calculate the molecular weight of the stack gas, which leads us to...that is part of the equation to calculate the emission rate.

Ms. Nogami Streufert: I know that there is a concern about the school and the children, and so not doing it during the day while school is on, but right across the street from the school is the hospital, which is air-conditioned, but it is still a hospital, so that is a concern. The question is, are there other kinds of air quality test that...O₂ and CO₂ is really not an air quality test, I don't think. Are there any air quality tests that are actually done about the gases, not necessarily the particulates?

Mr. Johnson: There is none required, but there are tests – like in this case, probably like volatile organic compounds, which would be like the vapors coming off of a petroleum product – to monitor that sort of thing. But when you monitor that type of pollutant at those really low levels, like in ambient air a mile away from the source, you are more likely to see zero and negative

readings. The range and the accuracy of the analyzer – they don't really go to that low level, I guess is what I am trying to say. They probably wouldn't pick up or detect...

Ms. Nogami Streufert: Well, if they can smell it, they probably could, and if you are using an odor suppressant, they probably could. So the question is, can a test like that be done just to see what other kinds of gases might be there at what levels? And if that is clear, then I don't think we have a problem. My problem is not really with the odor. Yes, I don't particularly care for the odor, and even odor can sometimes be negative; you were talking about a pig farm at one point in time. While odor from pig farm also has ammonia, you don't want to be smelling that all the time. So from my perspective, it is really a health issue because you do have a school and you have a hospital right next door to it, and in a one-mile radius, you have a lot of people who are living there. So whether you do it at night or not, if there is any noxious gases in there, it could be potentially dangerous to the people around; whether it is at night or during the day, and regardless of what way the wind is blowing because you've got people all around. So I would...

Mr. Dahilig: Is there a standard for sulfur dioxide as a threshold level for emissions?

Mr. Johnson: Yes.

Mr. Dahilig: And that is not currently tested right now?

Mr. Johnson: The Department of Health, I believe, has ambient air stations located strategically on all the islands, and they measure...I am not sure what they are measuring in every station, but they measure sulfur dioxide, carbon monoxide, hydrocarbons...

Mr. Dahilig: But for the purposes of...some of the emissions, relating to odor, are traceable. From a land use context, we are having to deal with health and safety, as well as nuisance; some gases are health and safety, some gases are nuisance. I think the concern that the Commissioners have is that there needs to be, I guess, something that looks at both from a scientific standpoint, and whether or not the current level of testing is providing the range of information both from the health and safety emission side as well as the nuisance side. So whether or not there is a broader spectrum of gases that can be sampled from an air quality standpoint beyond what is currently the bandwidth of gases that the Department of Health requires just for their own health and safety items, I think that is what I hear the Commission wrestling with at this point. I guess we are clear at least from the applicant that they are willing to do more periodic tests beyond what is required at the DOH level, but I think it is also an issue from a specificity standpoint as to what those gases that are sampled for include. Now, I am not a scientist and all I know is from basic standpoint that sulfur smells pretty bad, but it could be other things that create that nuisance odor. But I don't know how to specify that I guess; that is the dilemma. From a departmental standpoint, I don't know how to articulate what gases to look at because at the end of the day, we are not scientists either.

Mr. Johnson: Well, I think that is why the Department of Health and the EPA have determined that, for this particular type of plant, these are the pollutants of interest that we want you to test for. If there was a hazard of the, for instance, volatile organic compounds, which is like a petroleum mist or vapor, there would be a requirement to test for that, but their scientists, I

guess, have determined that there is not. Now, there is ambient air quality standards that are...you know, you could look online at the EPA website that shows the limits. There are limits to ambient air quality levels, and to monitor those, it becomes very expensive, so almost cost prohibitive, unless you are going to be there forever. And then that is where, also, the Department of Health does do that type of monitoring and...you know, they do monitor those type of things, and I believe they have a website as well that shows that information where you can go and look at it yourself and see what is going on.

Unidentified Speaker: (Inaudible)

Mr. Johnson: Yes, see that's...with sulfur, it's one of those.

Ms. Ahuna: Would it be so much to ask just to do a foundational test on that volatile...the one that you shared with us in response to Commissioner Streufert?

Mr. Johnson: Well, it is a petroleum product vapor, so—

Ms. Ahuna: Just like a baseline kind of test.

Mr. Johnson: We would have to engineer something.

Ms. Nogami Streufert: Don't they do that around gas stations? You know, when you get to a gas station, you are filling in gas, they tell you don't keep smelling the...to not be – not ingesting – but to not be inhaling the gasoline fumes; that it is not good and stuff like that. So if this is a petroleum product, there must be some way of measuring the emissions from that.

Mr. Johnson: Well, that is a good example, except they don't measure any emissions here in Hawai'i on gasoline being transferred into your vehicle. In California, they have vapor recovery nozzles that suck all the gases off and then they process it. At each gas station, they have their own vapor recovery unit or vapor flare.

Ms. Nogami Streufert: Would the company be willing to consider an emissions test, a one-time emissions test, to see what kinds of gases are actually being emitted? Whether it is day or night, it doesn't really matter. And just to see that—

Mr. Rhineland: I think we would be willing to look into it. We just have to...we will go back. We will take a look at it.

Ms. Nogami Streufert: Because I think we are truly concerned about the west side and the children and the hospital there; that is the only hospital we have on the west side. And with only one (1) road to go from Kekaha to Puhi, it is real tough if you have a problem and have to use that. So I am more concerned about the health; nuisance is one (1) issue, but public health is something that I think we all take very seriously.

Ms. Nishimitsu: Not to be contrary-minded, but if Department of Health is regulating the health issues and this has established the limits of particulates that impact a party's health, requiring

more than the standard level of tests which, according to Mr. Johnson, is about \$13,000 a pop, and then, on top of that, adding a requirement that the applicant do additional tests for which parameters have yet to be established on a potential extension of a year or a year and a half...you know, it is uncertain whether the Commission would take it. It is like if the gas test establishes something, is there, then, going to be a requirement that what Mr. Johnson describes as being potentially cost prohibitive going to be a requirement on a more frequent level for the applicant? We have other batch plants that operated; while one is operating at Halfway Bridge, there was one that operated in Hanamā'ulu Valley and has been abandoned, which incidentally they did look at but was not available. So, I mean, their options have become severely constrained at this point, and for them to continue to be in business, which I know is not your concern, whether it is profitable or not, but it does impact all the taxpayers down the road when there is only one (1) supplier of a product for all our resurfacing and new roads on projects that are coming up. And that is part of the balancing act the Commission has to do, too, so I just leave it at that.

Chair Apisa: Okay. Well, it seems there is sort of a loss of terminology in defining gases and that. I would suggest that our planner, maybe, meet with you and try to work out some of the terminologies and see if you can come up with a recommendation, and then we could bring it back on our agenda closer to the end of our meeting today.

Mr. Dahilig: Yes, Commission Chair, what we can do is, maybe, sidebar with the applicant and take the discussion and try to come up with an amended recommendation for the Commission to move on concerning the amount of time (for) potential protocols concerning complaints and periodic testing, and see if that can be managed in an additional condition...I guess a recommendation. Maybe we can bring it back to the Commission later.

Chair Apisa: Right. From what I am hearing, you need about two (2) more weeks or so to use the local product and then you will be back to the mainland product. There have not been complaints on that, but maybe our planner here could...you guys could get together and come up with an amended recommendation from our planner, and we will bring it back to the agenda shortly. Would that work?

Mr. Rhineland: Yes.

Chair Apisa: Motion to defer to later on in our agenda?

Ms. Ahuna: Second.

Chair Apisa: No, I am asking for a motion. I'm sorry.

Ms. Nogami Streufert: I move to defer the action until later in this meeting.

Chair Apisa: And a second?

Ms. Ahuna: Second.

Chair Apisa: Thank you. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0. Thank you.

Mr. Dahilig: Thank you, Madame Chair.

COMMUNICATION (For Action)

Mr. Dahilig: We have no communications this morning.

COMMITTEE REPORTS

Subdivision

Mr. Dahilig: We do have a Subdivision Committee Report that has been circulated for the Commission's action.

Chair Apisa: I need a motion to approve the Subdivision Committee actions.

Ms. Nogami Streufert: I move to accept the Subdivision Committee Report No. 8.

Mr. Keawe: Second.

Chair Apisa: You have a comment, Commissioner Ahuna?

Ms. Ahuna: No, I was ready to...

Chair Apisa: Oh, ready to vote, okay. I thought you were leaning forward with a question. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

UNFINISHED BUSINESS (For Action)

Mr. Dahilig: We have no Unfinished Business.

NEW BUSINESS

Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 to allow conversion of an existing single-family residence into an Administrative Office on a parcel located along the mauka side of Kōloa Road in Lāwa'i, situated approx. 200 ft. east of the Iwipoo Road/Kōloa Road intersection, further identified as 3691 Kōloa Road, Tax Map Key: (4) 2-5-011:077, and containing a total area of 10,326 sq. ft. = 'Ohana Home Health, LLC.

[Director's Report in Consent Calendar brought to discussion by two Commissioners 1/9/18, deferred to 1/23/18.]

Mr. Dahilig: And we are back to some of the items that were taken care of at the hearing stage of the meeting. We are on Item F.2.b. This is the Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 for 'Ohana Home Health, LLC. Mr. Bukoski will be providing the report on behalf of the Department.

Staff Planner Chance Bukoski: Good morning, Madame Chair and Commissioners. I will do my best to summarize the report.

Mr. Bukoski read the Summary, Project Data, Project Description and Use, Additional Findings, and Preliminary Evaluation sections of the Director's Report for the record (on file with the Planning Department).

Mr. Bukoski: That concludes my staff report. I will hold off on my conclusion and recommendation.

Chair Apisa: I will call the applicant. Finally, your turn.

Ms. Woolway: I have calmed down quite a bit, too, by the way. My name is Susie Woolway. I am the owner/administrator for 'Ohana Home Health, which I opened myself in...started in 2011. It was quite the arduous project, but we are in a position now where I am looking to move into our own property. I am currently renting, from 'Ohana Sports Medicine, about 750 square feet. We are very stable. It is not like I am trying to add more staff or to take over the island. It is just I want to provide a very stable opportunity for homebound patients. As I said, we are a Medicare Part A home health agency. We provide the speech, occupational, physical, and the skilled nursing. We have one (1) CNA, but as a Medicare agency, we just try to...you know, just stick to...I am a speech therapist by profession from 1991, so when I opened the agency, I really wanted to have a really heavily-skilled therapy to be able to go into people's home and not just a physical therapist. We are doing it; it is great.

I have a team up on the east side because I think one of the things I always thought was an issue is, of course, traffic and parking. Last year, I went ahead and...above Kaua'i Ice Company in Kapa'a, I opened a small office for my east side staff so, one, they had access to their materials, which one of the things I did want to pass on to you as, I don't know, evidence or an addendum or attachment is that I went ahead and printed up my inventory of all the supplies we carry. If you have any questions, of course ask me, but a lot of it is for wound care, it's TheraBand. I have some people donate wheelchairs and walkers to me – that kind of stuff – so I don't have any type of medications. If we are doing blood draws when we get a doctor's order, because we do everything under a physician's order, we go to the diagnostic centers, you know, clinical diagnostics. We pick up the supplies there, we take them straight to the patient's home, do the blood draw, and as you probably know, you got to get it right back to the labs, so we get them right back to the lab so they never even go into a refrigerator, which we do have a fridge labeled "Food Only" but we have to do that for Medicare. But we have no medications that are kept on

site because that would be a concern. I don't want people breaking in to my house, not my house, our house, OHH house.

So that's my spiel on that one. Does anybody have any questions? Because I am sure there are and I really want to...I want to be a good neighbor.

Mr. Keawe: Just real quick, how many clients do you actually have, that you are actually servicing?

Ms. Woolway: We have a census of about seventy (70) to eighty (80), and during the holidays when we have the hospitals, like, trying to get people home because people want to get home, we get up to about a hundred (100) and a hundred and ten (110) census; that is on both sides of the island. Because that is another thing – I want to be able to provide services for the whole island; that is why I have an east side team with PT, OT, speech, and nursing, and same side [*sic*] on ours.

Mr. Keawe: If this works as far as this particular facility, you have twelve (12) full-time employees. Is that correct?

Ms. Woolway: That is correct. That is with the PT, OT, speech; that is east and west side team.

Mr. Keawe: Okay. Now, all of them have cars?

Ms. Woolway: Yes, you have to have a car.

Mr. Keawe: Okay. Do you have enough space to park twelve (12) cars on that property?

Ms. Woolway: Not on the property. Keeping in mind, please, that one of the things is – that is why I have an east side office now – is that four (4) and five (5) staff...they don't have to come down. One other thing we do have is – in addressing the concerns about parking – is we have two (2) case management staff meetings a month, so about every two (2) to three (3) weeks. One of them is a west side based one where it is only the west side employees.

Mr. Keawe: And how many employees on west side?

Ms. Woolway: On the west side there are four (4), five (5). If you include, also, the four (4) administrative staff, it's eight (8).

Mr. Keawe: Okay. So rather than twelve (12), it is still eight (8) cars.

Ms. Woolway: Yes.

Mr. Keawe: Okay, and the other side is the balance. The east side one is the–

Ms. Woolway: The other four (4), correct.

Ms. Ahuna: You do mobile outpatient care as well, though? You don't bring the patients in, you just go out, right?

Ms. Woolway: Correct. Yes, I don't even remember the last time I had a patient or family member come through the doors; though they are always welcome.

Ms. Ahuna: And you service Department of Education?

Ms. Woolway: No, no. We do take Medicaid, but mostly it is the over 65.

Ms. Ahuna: Oh.

Ms. Woolway: Typically.

Chair Apisa: Commissioner Lord.

Mr. Lord: Excuse me. So in looking at the photos here and the site plan, where are the cars going to park?

Ms. Woolway: Okay, so in the driveway, if you look at the photo, it is a pretty huge area, and I actually went in and had people park in there to make sure because I want...I mean, like I said, I want to be a good neighbor, I want the place to look nice. And that one front area where I was suggesting was some of the parking with the public road – because it is Lāwa'i and Kalāheo and is a little bit wetter in that specific area coming out of the valley, I don't want my staff always parking in front of there because they are going to tear the freaking grass up and it will look nasty; I do not want that. The whole thing is we are in people's homes and I want to represent us as something really positive.

So going back to the picture, it is actually...and it is a pretty good size, and it is not like I'm bending it where I'm saying oh, there's a fender that is barely out there. We are tucked in really nicely with the four (4) cars. Typically, our administrative staff, we are in the office. We are not out traveling around because there is a lot of moving parts in dealing, of course, with Medicare and with Medicaid and with the commercial insurances and the managed care, so we are not out traveling around. Typically, we are eating lunch in there, which I am really excited there is a kitchen and a big fridge. But one of the other things to address with the parking – in one of the pictures, it shows...from what the property owner said, there used to be, actually, an additional parking area that now has a bunch of plants in it. So what I want to do is actually look at...and I did go ahead and speak with Ken Souza of Ken Do Construction because I want to try to be as proactive as possible about...and it still fits in that ten percent (10%) on the property. It is kind of hard to see, but it is that green strip you are looking at, so I want to move the shrubs out of the way and put two (2) of those cement pads going so it doesn't tear up the grass because, like I said, I want to represent a very positive face for 'Ohana Home Health. So those two (2) strips of cement would go up, and it is 24 feet, 26 feet up to that first lava wall, and then the width of it is about 7 feet. So I measured my car because I went in and just...my car is a pretty regular shape and size, and it is about 4 feet wide, 4 to 5 feet wide, so the strips would still fit within that 7 feet radius. With Kenneth Souza, he said that he went and looked at the property for me, he

measured it out, and he said it would be about \$1,200 to do, and that is something I would like to project forward; to have something like that put in because, once again, I don't want us ripping up the road, I don't want people parking there and tearing it up if we got a really wet week of rain, which is not unusual for Lāwa'i.

Mr. Lord: So is the parking on the site map along Kōloa Road or is it close to the house?

Ms. Woolway: Are you talking about for the house house part?

Mr. Lord: The projected parking that you plan on—

Ms. Woolway: Oh, it is directly in front of the garage door. The garage is converted into a—

Mr. Lord: Well, I am looking at the plot plan, so which wall are you talking about? The concrete driveway? Is that what you are talking about?

Ms. Woolway: For the extension? Or for the regular driveway?

Mr. Lord: For the parking; the additional parking.

Ms. Woolway: The regular one. It is the one that is right in front of the house itself.

Ms. Nogami Streufert: It goes towards Kōloa Road.

Ms. Woolway: Yes.

Mr. Lord: Okay, so the one between existing concrete drive and the wall at Kōloa Road?

Ms. Woolway: Yes. I believe it is a County road over there, right? Chance?

Mr. Bukoski: Correct.

Ms. Woolway: And then in front of the house itself...well, I think I have it written as parking area, too.

Mr. Lord: So how many vehicles? I had five (5) written down in my notes.

Ms. Woolway: Well, there's myself...the biller would come in and out. She usually comes in late in the afternoons and she is part-time; she does under twenty (20) hours a week for billing. So that is where that 5th car comes from I think.

Mr. Lord: Okay.

Ms. Woolway: Dang it, I will go and park my car down at the old Lāwa'i General Store if need be.

Ms. Ahuna: But you are mainly operating during business hours?

Ms. Woolway: Yes, 8 to 5. Because we are a home health agency, we do 24/7, but it has nothing to do with the office.

Ms. Ahuna: Right.

Ms. Woolway: That is out in the community; that is seeing patients over the weekends.

Ms. Ahuna: Yes, and you are pretty much around other commercial...like Hale 'Ōpio, Lāwa'i Cannery.

Ms. Woolway: Right. Right across the road, in one of the pictures, you can actually see—

Ms. Ahuna: And No Ka Oi Landscaping.

Ms. Woolway: No Ka Oi? Is No Ka Oi over there?

Ms. Ahuna: I don't know. I've seen their truck coming out of the parking over there.

Mr. Keawe: It's Thronas.

Ms. Ahuna: Thronas, yes, Thronas.

Ms. Woolway: Thronas is the cement place people. And then I do believe the tow truck, that agency, they are using the old Lāwa'i General Store parking lot these days.

Mr. Lord: Excuse me. But the lot, itself, is in a Residential zoned neighborhood?

Ms. Woolway: It is on the backside of it. If you look at the picture, we are on Kōloa Road, so how it is zoned Residential – this is my understanding and correct me if I'm wrong on it—

Mr. Dahilig: I just want to be clear, this is not zoned Residential. This is a residential unit on Open zoned land.

Mr. Lord: Open zoned land, okay.

Ms. Woolway: Oh, okay.

Mr. Lord: Are there any other commercial users? Chance, are there any other commercial users in that subdivision?

Mr. Bukoski: On the mauka side of the road?

Mr. Lord: Yes.

Mr. Bukoski: The farthest one I know is the shell store at the corner of the highway; that is the only one I know on that side. But if you are looking at the opposite side, you have Aqua Engineering, you have Lāwa‘i Cannery, you have some of the retail stores like Shipwrecked – the new ones – and then you do have some of the food establishments (inaudible).

Ms. Ahuna: Where is Hale ‘Ōpio to this? It is, like, right next door, huh?

Mr. Bukoski: Yes, it is right next door to the right if you are looking at the map.

Ms. Nogami Streufert: You share a driveway. Is that correct?

Ms. Woolway: No. Actually, only with one (1) family that is up above us. Hale ‘Ōpio has their own entryway. There is a gully and it is quite dense in there, too, so they have a driveway up away.

Chair Apisa: So there is a shared driveway but there would be no impediment to that traffic in and out of there?

Ms. Woolway: No. And I will tell you, if there is an issue, I will address it because I want to be a good neighbor. I want them not to even know I am there. I mean, well no, that’s not...no, as a business, that is a bad thing, but I don’t...I want to be a good neighbor.

Ms. Nogami Streufert: Could I ask a question of Chance?

Chair Apisa: Sure.

Ms. Nogami Streufert: Chance, according to the parking rules, you have to have one (1) parking stall for every 200 square feet. Is that–

Mr. Bukoski: Correct.

Ms. Nogami Streufert: So if it is a 1,400-square foot building, then technically there should be seven.

Mr. Bukoski: Seven.

Ms. Nogami Streufert: So we are also looking at a variance for that, too. Is that correct?

Mr. Bukoski: If you are looking at the zoning ordinance where it looks like you’re...are we converting the zone to Commercial as a sense from Open to Commercial? Or are we just using the use of it?

Ms. Nogami Streufert: The use.

Mr. Bukoski: Use. So if we are looking at the use of it, I would just say yes, it would have to coexist with the permit, but we would have to do...well, I wouldn’t...that is a good question.

Mr. Dahilig: Well, you know, what defines a parking stall does not necessarily mean that it has to be paved. From a lot coverage calculation standpoint, if the parking area is designated, let's say, on grass, for instance, that is not considered a hardening of the surface but at the same time meets the square footage standard. So there is a way that both can be reconciled concerning the per square footage and parking requirement, as well as whether or not you are meeting the lot coverage requirement. So we do not require that parking has to be a hardened surface.

Ms. Nogami Streufert: But there is a requirement for seven (7) stalls.

Ms. Woolway: Areas for parking.

Mr. Dahilig: Yes.

Ms. Woolway: All I need is a chainsaw. I can make those three (3) more spaces. Sorry. But I do intend to make it larger because I don't want people parking, on a regular basis, on the road for a lot of different reasons, not just tearing it up; safety reasons and all the rest.

Mr. Lord: There is quite a bit of medical supplies being stored there. I assume those supplies are going out to clients so that will add additional traffic during the day to the seven (7) cars. How do those supplies get out of the—

Ms. Woolway: Yes, that is a great question. Part of being a Medicare provider, once something goes out of our office, it can't come back in because of...it is considered gone; it is written off. If you don't use those supplies, they are gone. So in other words, when we have a new patient come on and we have a...under doctor's orders – let's take a wound VAC one because they are kind of more complex and they do take a lot of things, like the saline solution and wound VAC equipment and gauze and saline and everything else that goes with it – what we try to do because, one, we don't want the staff to have to run in and back out of the office. It can be very disruptive for us in working and doing what we need to do to make sure that they can do their jobs out in the field. So, what we try to do is at the very beginning, we have to do what's called an— Sorry if it is too much, but I really want you to understand what we are doing and how we are trying to do this. We have to do an oasis data collection for the Federal and State, and this is specific for, you know, the type of wounds, where they lived, all the different demographics on them, what their diagnoses are. So once we gather the information, I have to get it submitted. It has to be completed and submitted to the physicians within five (5) days. It is really intense. And, of course, we can't get paid, unless we do get the submission, so we are pretty rocking on that. The medical supplies – once we know what they are, they are out in the patient's home and they stay there. They don't come back and forth into the office. There will be times, yes most definitely, they are going to have to come back into the office, but we try to make sure that once we know what the patient needs, that those supplies are in the office. Then we could...take a therapist for example, somebody who has broken a hip and they need TheraBand or a walker or whatever, typically we give it to them and it stays at their home. It doesn't ever come back out. We don't wash and reuse things like that.

Mr. Lord: So periodically your service providers come to the administrative office to pick up supplies to take them out into the field?

Ms. Woolway: Yes, most definitely. The east side—

Mr. Lord: And those service suppliers are not calculated in the five (5)—

Ms. Woolway: No.

Mr. Lord: Okay.

Ms. Woolway: And that's why...because they only come to pick up stuff, that's why I was hoping what we could do is utilize the side there, or...actually, I don't want them parking across the street because, once again, Kōloa Road is pretty...even though it is a two-lane, it is still busy. I don't want people traipsing back and forth across the road; that doesn't mean I won't do it, but I don't want my staff doing it. In six (6) years, I have only had one (1) TDI and that was when somebody slipped on a porch. I try to take all the precautions I can to keep my staff safe; in and out of the homes.

So yes, answering your question, there are going to be times there will be more cars; you are right.

Mr. Lord: Thank you.

Chair Apisa: Well, any others questions from the Commissioners?

Mr. Dahilig: Just for the record, I want to make clear why a Use Permit was appropriate in this case. Under Section 8-2.4(t)(4) of the Code, home businesses trigger a Use Permit. Home businesses include things like...also, adult daycare facilities, those types of things. So under 8-2.4(t)(14), we are deeming the use as applied for as being similar to a home business. It is not exactly a home business, per se, but it is similar given the type of work they do, as well as the fact that it is in a residential dwelling. So that is why a Use Permit is being triggered here as compared to something that is a Variance Permit. The standard, again, is a discretionary one for the Commission relating to whether or not they believe that this should be permitted in the Open Zone. Now, absent the discussion concerning chainsaws and those types of things, the reality is that the weighing that we are looking at is that the proximity of the proposed use on Open zoned land is in relative immediate range of other commercial uses up and down that stretch. However, you know, reasonable minds can differ on this, so I just want to make clear for the Commission that that was why we triggered a Use Permit as compared to a Variance Permit in this case and why, from a standard standpoint, we are classifying the calculations as being commercial because of things like parking and whatever not. So just to kind of lay out for everybody's analysis where to go on it.

Ms. Ahuna: I personally think it is great. I think what you are doing is awesome. We very much need all those services in our community and small businesses are great to have in our local community. You seem very passionate about what you are doing, and I don't see that your traffic would be any more than my teenagers, so I think it is a really good thing that you are doing.

Ms. Woolway: Thank you. And I am more than willing to go ahead and get those two (2) strips of cement slapped on there to make more room. I will do anything for this agency. This is my baby. And, the people I work with are lovely; they are really a great group.

Ms. Ahuna: On top the fact that you are a woman with a small business. It's great. Good stuff.

Ms. Woolway: Okay, thank you.

Ms. Ahuna: I am ready to vote.

Chair Apisa: Anyone else? Commissioner Lord.

Mr. Lord: I have a question. Have you spoken with your neighbors?

Ms. Woolway: I wanted to respect their privacy, so what I did was I did...when I went and did the research on all...the 300 feet closest to the house, I did a hundred percent (100%) on the certified letters. I had seven (7) of the eight (8) come back. The 8th one that didn't come back was McBryde, and I am not sure where their little property is, but I think they must not have anything on there, but they didn't even sign it and send it back – the certified. The family that is above us – I wanted to go and knock on that door so bad but, also, respecting that they have the right to be able to voice their opinion without me trying to do it because this is what I want. So I want them to have the opportunity to express their concerns, so I can address them without me in their face, so to speak. So no, I didn't contact them other than the certified mail, and – I'm sure you guys have a copy of it and I think I actually did it as a folder – everything I put in the letter wasn't just the announcement of the public hearing, but I did a flyer, a letter that was just personally to each of the groups and the people that were listed on there because I want them to have the opportunity to state their opinion and, once again, state their concerns so we can address them.

Ms. Ahuna: One of your neighbors is Hale 'Ōpio, correct?

Ms. Woolway: Yes, correct.

Ms. Ahuna: Have you communicated with them and, like, (inaudible)?

Ms. Woolway: Once again, I don't want to try to sway...either people have to...I need them to express their concerns so I can address them. If I–

Ms. Ahuna: Only because you guys have similar services.

Ms. Woolway: Oh, no, I would love to go. Are you kidding? I would love to go harass everybody, but I don't want to harass them until I get permission that I can do that. Do you know what I'm saying?

Mr. Dahilig: Madame Chair–

Chair Apisa: Alright, thank you.

Mr. Dahilig: Madame Chair, I think, you know, just for...so we know what we're discussing here, if I can maybe have the Planner provide the recommendation for the Commission and then the Commission can move forward on discussing whether they want to pursue approval of the item or not.

Mr. Bukoski: Go forth with the recommendation?

Chair Apisa: Yes, please.

Mr. Bukoski: Okay. Based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 be approved subject to the following conditions. Would you like me to read out the conditions as well?

Chair Apisa: Yes, please. How many are there?

Mr. Bukoski: Five.

Chair Apisa: Okay, thank you.

Mr. Bukoski read the five (5) conditions of approval for Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 for the record (on file with the Planning Department).

Mr. Bukoski: That concludes the recommendation.

Chair Apisa: Thank you. Does the applicant agree with these five (5) conditions?

Ms. Woolway: As much as I understand it, yes. No, I do...I understand. It sounds like some things are fairly general, but yes, I agree.

Chair Apisa: Alright, thank you. Would anyone...thank you very much.

Ms. Woolway: Thank you. Thank you for your time.

Chair Apisa: Oh, more questions? Sorry. More questions. Commissioner Ho.

Mr. Ho: Since the applicant is willing to remove some hedges and put in a parking area for that, could we increase that condition to say that...what were they? Two (2) more stalls?

Ms. Woolway: I think I could get three (3) more cars in there—

Mr. Ho: Three? Yes?

Ms. Woolway: —actually.

Mr. Ho: To make it to seven.

Ms. Nogami Streufert: That would be in compliance.

Mr. Keawe: It would be in compliance—

Ms. Woolway: Yes.

Mr. Keawe: —with the 200-square foot...yes, seven.

Mr. Dahilig: So we would add an additional condition, No. 6, that the applicant shall provide a total of seven (7) parking stalls.

Ms. Nogami Streufert: Could I ask a question of Chance? This is an open space, but is that part of the Lāwa‘i Hillside Estates?

Mr. Bukoski: Correct.

Ms. Nogami Streufert: It is part?

Mr. Bukoski: Yes.

Ms. Nogami Streufert: So it is part of that residential area.

Mr. Bukoski: Correct, the subdivision.

Ms. Nogami Streufert: But it doesn't have any direct access to that residential area. Is that correct?

Ms. Woolway: No, none; lots of walls.

Ms. Nogami Streufert: Because it is a concern that we have not too much affordable housing and that is an intact residential neighborhood and consequently—

Ms. Woolway: I thought about that.

Ms. Nogami Streufert: Okay.

Ms. Woolway: One of the positive things is we are not losing a rental space because with me moving out, there is a rental; that is actually going to be rented out — the house we are in on ‘Ohana Sports Medicine property. So it is kind of a trade, not the best trade because I wouldn't want to live there, but it is a home that is...the owner already said he is planning on renting it as a rental.

Ms. Nogami Streufert: I am just looking at...where you are going to be in, it is a residential area. Chipping away at residential areas is sometimes difficult, but I understand the need.

Ms. Woolway: Yes, it is a concern. I am trying to put a...that is my next process, hopefully; is looking at my own home so I can rent out a long-term rental under the house, but that is down the road – years.

Ms. Nogami Streufert: That brings up another one. A Use Permit goes with the property.

Mr. Dahilig: Yes.

Ms. Bukoski: Correct.

Ms. Nogami Streufert: And not necessarily with the business, so it will always be an entitlement as an administrative office only. Is that correct? For administrative use.

Mr. Bukoski: Home business.

Chair Apisa: I think we need to take a 10-minute break here to change the tape. Thank you.

The Commission recessed this portion of the meeting at 11:30 a.m.

The Commission reconvened this portion of the meeting at 11:40 a.m.

Chair Apisa: Call the meeting back to order.

Mr. Bukoski: So, I guess, we are going to add on two (2) conditions: Condition (Nos.) 6 and 7. Condition (No.) 6 shall read, the applicant shall establish a total of seven (7) parking spaces while complying with the Open development standards. And then Condition (No.) 7 shall read, this permit shall expire fifteen (15) years (from) the Commission approval date. Would the Commissioners like to add anything else?

Ms. Nogami Streufert: (Inaudible)

Mr. Bukoski: Yes, fifteen (15) years (from) the Commission approval date.

Chair Apisa: Are there any members of the public that would like to testify?

Mr. Brandan Nakamoto: Hi. My name is Brandan Nakamoto. I am the neighbor that shares the driveway with the lot we are talking about. I am not here to oppose or anything. I just wanted to express a concern that, you know, as it was brought up, the amount of cars that would be going in and out of that driveway. It is just a normal residential driveway, so if I am coming in off of Kōloa Road and there is someone...you know, you are not going anywhere. That is the only concern I have; is making sure that I can get in and out of that shared easement. Given their business hours, I don't think it will affect my wife and I, but my tenant...his hours are a little bit different than ours and he does have some medical needs now that I think for him being able to leave when he needs to leave might be an issue.

Ms. Ahuna: I have a question.

Chair Apisa: Question?

Ms. Ahuna: So when you are coming out of the driveway, only...if you are coming out, you cannot go in at the same time? Because it is not wide enough.

Mr. Nakamoto: Yes, it is definitely not wide enough to allow two (2) vehicles to pass each other. And, you know, we've had people living there – I've been there for four (4) years now – you know, we've had people and I think I've had maybe three (3) occurrences where they were trying to come out when I was trying to come in. As long as you are paying attention, you can kind of time it alright, but with it now becoming a property where there will be those four (4) cars taking up that cement pad in front of the garage, you know, if someone stops by and they think hey, I can just double-park behind these cars, that may create an issue. But I think Susanne has expressed that she will do whatever she can to make sure that that easement stays open for us.

Ms. Nogami Streufert: Are you satisfied with that?

Mr. Nakamoto: Yes. I just wanted to go on record just stating the concern.

Ms. Ahuna: You are the property owner?

Mr. Nakamoto: Yes.

Ms. Ahuna: Okay.

Mr. Keawe: So you own the house right behind?

Mr. Nakamoto: Yes. We share that easement and then we are the house above hers.

Mr. Keawe: Right above her, okay.

Deputy Planning Director Ka'āina Hull: One of the primary purposes of a Use Permit is to ensure that the proposed up-use is not to...not going to negatively impact the surrounding area; in particular, the surrounding neighbors. So the Department would have no problem, given the testimony, in amending the recommendation to have a final condition of approval to state, "The operation of the subject office shall not, at any time, block the subject property's shared driveway."

Chair Apisa: So I think that is covered. No further questions?

Ms. Nogami Streufert: That would be Condition No. 8?

Mr. Hull: Correct. The Department would be recommending to amend our...or we would be amending our report to include a Condition No. 8 as read.

Ms. Nogami Streufert: Is that acceptable to...

Mr. Hull: You would want to call the applicant up to see if that is acceptable to the applicant.

Ms. Woolway: (Inaudible)

Chair Apisa: Any further questions for the—

Ms. Ahuna: Is that acceptable for you?

Mr. Nakamoto: Yes, that would be acceptable to me.

Chair Apisa: Alright, thank you very much. We would have to call the applicant back up just to verify that the conditions are all acceptable; we have added a couple. Maybe identify yourself.

Ms. Woolway: I am Susie Woolway, again, the applicant. I did want a little clarification. I have already talked to Yvonne and I am already thinking of moving forward on getting that strip in, but I did lock myself in because I thought either it is going to make it or not; for the loan. I am locked in at a rate for the next thirty (30) days, but what I wanted to check is how long do you think it would take before...what would I need to do in the process of putting in those two (2) strips in, like on the variance and the permitting? This took as long as I thought it would; about five to six...five (5) months. Is it going to take another five (5) months? Can I move forward and, like, say okay, I am going to do an act of faith here, I am going to put those strips in now so we can...not take too long so it will show it. Does that make sense?

Mr. Hull: If I can...

Ms. Higuchi Sayegusa: At this point, I think the Commission is still trying to figure out what the conditions of approval may or may not be. But assuming the permit is issued today, then I think you will have the approvals to have entitlement related to your home business. But again, I would wait until the Commission discusses further and takes a vote on what the conditions of approval may be.

Ms. Woolway: Okay. Alright, great.

Chair Apisa: So you do approve of the eight (8) conditions that are (inaudible)?

Ms. Woolway: Yes, most definitely.

Ms. Nogami Streufert: I move, then, that we accept the Department's recommendation for Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 be approved subject to the eight (8) conditions that were listed earlier.

Chair Apisa: And a second?

Ms. Ahuna: I second.

Chair Apisa: All in favor? (Voice vote) Any opposed?

Mr. Lord: Aye. [sic]

Chair Apisa: Okay, one (1) opposed. Motion carried 5:1.

Ms. Woolway: Thank you everybody. Thank you for your time. Thank you, Brandon, for coming in; appreciate that.

Mr. Dahilig: Thank you, Madame Chair.

Zoning Amendment ZA-2018-3: A bill (No. 2671) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Comprehensive Zoning Ordinance. The proposal amends several sections of the Shoreline Setback Ordinance = Kaua'i County Council.

Mr. Dahilig: We are now on item for action; Item F.4.a. This is Zoning Amendment ZA-2018-3, Bill No. 2671 relating to the Shoreline Setback Ordinance. Just a reminder to the Commission that the hearing on this was deferred until we get more information from the University of Hawai'i. I am going to turn it over to the Deputy Director who is handling this particular matter.

Mr. Hull: Good afternoon, Madame Chair and members of the Commission. Concerning the Shoreline Setback Ordinance amendments that Council has sent over to you folks, what you folks have before you is an omnibus bill that attempts to amend the vast majority of the existing ordinance. Quite honestly, the Department was a little baffled when we got the draft ordinance, I will say, because we didn't quite understand where some of the proposals were coming from. In particular, some of the specific concerns we had were that it erased the applicability of the Shoreline Setback Ordinance recent...well, the Shoreline Setback Ordinance has gone through two (2) iterations. The first iteration was virtually unenforceable at the Planning Department, so the Planning Department and the County Council took a second stab at it and we were able to get something that is currently in existence and currently law right now that we are able to enforce. But some of the problems we had that the proposal looks at going back to is applying it to every single proposal on any abutting property, which there are a lot of properties abutting the shoreline that are very large properties. So it puts requirements such as having to do a shoreline setback survey for a fence post at the Kōloa Mill, so to speak, because the Kōloa Mill sits on a property that abuts the shoreline. All of the G & R properties...not all of it, but all of those large...formerly in cane production that are makai of the highway abut the shoreline but sometimes they are a mile deep. A lot of the Kaua'i Coffee lands, also, are abutting shoreline properties that it gives no discretion to say you don't have to do a survey.

And to take a step back – sorry, sometimes I am living in the policy (and) I forget to give the 50,000 foot view – the purpose of the Shoreline Setback Ordinance is to ensure that coastal erosion processes and coastal hazards neither effect structures or that structures are affected by coastal erosion or coastal hazard processes. So there is a requirement to have to set these structures back a certain distance to ensure that that structure is not affected by the coastal erosion or coastal hazard processes or, in some situations, where those structures don't affect the coastal erosion themselves. As we've learned, seawalls – when you erect seawalls, (it) can ultimately change sand migration patterns; for properties in other areas that didn't have erosion,

now have erosion. So that is the nutshell of what the Shoreline Setback Ordinance is about. It is about setting it back a certain distance from the shoreline so that it doesn't affect coastal hazards or coastal erosion processes.

Unlike other setbacks that are drawn from a stagnant, stuck property line, you have one (1) property line on a property, it is there; you purchase that property, you will always forever have that property line, and setbacks work in a manner of 5 feet or 10 feet you have to setback structures depending on the side of the property line. Where it gets a bit complicated in Hawai'i is that shorelines are property lines; anything makai of the shorelines is essentially within the State domain, anything mauka is a private property owner's kuleana. But where it gets really complicated is that shorelines are dynamic. Unlike other property lines, they move as that shoreline erodes or accretes into various areas. Now, when you have a shoreline that moves and you have to draw that setback of how far you have to build from that setback that means you have to survey that shoreline every so often to determine exactly where it is. Now, shoreline surveys can be extremely expensive. Your minimum shoreline you are looking at for a 10,000-square foot lot, you are looking at anywhere between \$10- and \$15,000 for a survey. Larger lots, like the Kōloa Mill lot, so to speak, that could be a quarter million dollars for that survey. So it is having to determine when an applicant...because the Shoreline Setback Ordinance is wrapped within the Zoning Ordinance, you have to determine when a proposal is actually going to trigger an analysis of having an actual certified shoreline. If a property owner is going to put, say, a fence post at Kōloa Mill, is there nexus to say you need to spend a quarter million dollars on a survey of your shoreline 2 miles away? That was one of the many types of problems...that is the extreme of it. Then you have properties that have structures located 1,000 feet from the shoreline that is going to do an interior renovation; maybe just a bathtub change out. Should that, then, be required to have to do a \$15- to \$20,000 survey? Or, in situations where the property is located 300 feet from the shoreline and they are going to put an extension on that house. Should they have to do a survey? In the first two (2) cases, we would have said probably not. In that last case, where they are 300 feet from the shoreline and they are going to do an extension, indeed, given the shoreline erosion in that area, it may or may not warrant having to require a survey being done to establish where the setback line is actually to be drawn; whether or not the proposal lies within the setback or not. So that was under the previous ordinance; there was no discretion. In the previous ordinance, all of those cases had to do a certified shoreline. So we were trying to say, when we amended it two (2) years ago, we need to have some discretion, guys. There are some scenarios in which requiring a very expensive survey of a shoreline is wholly unwarranted, so that is why we went back to the drafting table two (2) years ago.

There are other issues with the original ordinance. In particular, it called out activities as a requirement to have to do a survey and to establish a setback. And what you guys have gotten used to in reviewing SMA Permits, indeed, under HRS 205A, activities are warranted to be reviewed and regulated for their potential impacts on the coastal area. But when drawing an actual setback, setbacks are traditionally for structures, not for uses or activities. So when drawing the setback, should it be applicable to activities? And if so, there isn't much of a definition of what "activities" are; everything from a commercial use to family picnics, volleyball on the beach. Where do you draw that line? So we kind of have to say activities are regulated under the SMA process, it shouldn't be regulated in the setback process.

Finally, there was an area of concern that we had with the previous ordinance where we had kind of stated that we need to increase the buffer between 40 feet as a minimum for sandy coastlines to pushing up to possibly 60 feet to incorporate the science that's coming around saying we are going to be impacted by climate change. The specific data for the impacts of sea-level rise in the specific areas of Kaua'i – that data has not been done, so we felt it was appropriate to add an additional 20-foot buffer to the minimum 40-foot (buffer).

So we folded all these things into the previous ordinance, which was adopted, and what you have before you today, for the most part, is an attempt to...or at least proposes to remove all of those regulations, which, if passed today as proposed, would force the Department to put requirements on things like fence posts 2 miles away from the shoreline as long as the abutting property...to have to do these very expensive and lengthy shoreline surveys. It would also require us to begin a setback assessment on all types of activities in the shoreline area, including things like family picnics. Furthermore, it reduces or removes that 20-foot buffer from 60 feet to 40 feet as a minimum. Those are the glaring concerns the Department has. We raise those objections in our report that you folks have with you. But in the past few weeks, we have been meeting with members of the community who helped draft the proposal you have before you, as well as the introducers of the draft ordinance, to exactly get at the meat and potatoes of what their concerns were and explained that some of these... When we explained how the proposal works as proposed...and it is a very complicated and complex ordinance; one of the most complicated I have ever come across. So we were trying to explain to them, you know, you adjust something over here, it may have unintended consequences in the ordinance over here. When we were explaining these impacts to both the members of the community, as well as the drafters, of what the regulatory paradigm shifts would be, very much so they agreed that that is not what they had intended to do, so they had concerns with those policy shifts as I stated. The number one concern that came across, though, from the members of the community, as well as the drafts of the draft ordinance, is that currently, under the shoreline setback review process, there are three (3) exemptions but, really, you can only pull two (2) exemptions. There is a third one but we have yet to see that thing be pulled. But the two (2) exemptions are either, one, going through a discretionary review process by the Planning Director where the Planning Director will determine, in his professional capacity, whether or not a shoreline survey is necessary. As far as the drafters of the ordinance (and) the members of the community, (they) had mentioned, in that process, they had only one (1) objection. Of the three hundred some-odd determinations of exemptions the Planning Department has given, there has been one (1) objection and that applicant, after hearing that objection, removed their petition for an exemption. The vast majority of the objections that the members of the community had, as well as the drafters of the ordinance, was with the second exemption process, which is done through the renovations and repair exemption, and that exemption basically states that if you are renovating and repairing...or, should I say, you are repairing a house and not making any substantial improvements, the Public Works' Engineering Division will sign off whether or not it constitutes a renovation or repair, and that is essentially keeping the cost fifty percent (50%) below the appraised value of the house. So there are applications that are coming in under the repair exemption that appear to be anything but as soon as those repairs are done; where entire walls are going up, the house is being entirely redone in which it does not appear it's genuinely a repair so much as it is a rebuild. There were multiple objections by members of the community on those exemptions being given. And to that, the Department (will) say there is some merit to

that discussion, so let's figure out how we can possibly ensure that repairs are genuine repairs and not rebuilds because we had to point out to the drafters of the ordinance that that actual section of the Code is not proposed to be amended; it is kept the same in the current draft you folks have. So we are looking, specifically, at how we can now tweak or amend the language concerning repairs and renovations to ensure that rebuilds do not happen. We don't have any language for you folks at this time, quite honestly. We are working with the members of the community; Ms. Diamond is here to speak and she spoke earlier. We are working with Ms. Diamond, as well as others, to see if we can come to some common ground to ensure that rebuilds are not occurring within hazardous or erodible areas. And that is all I have for you folks now.

We are asking for a deferral. Secondly, as the Director, Mr. Dahilig, pointed out in the beginning of the Planning Commission meeting, we are also anticipating the updated data on Kaua'i's shorelines coming from UH in the next two-, three-, possibly four-months; they are close to updating that data. The current ordinance requires that that data be refolded in once it is updated, so when we talked with Ms. Diamond, as well as we talked with the introducers of the draft ordinance, they had no problem saying let's hold the Bill until we can get that updated data. So that is why Mike had asked for a deferral until we receive the updated data from UH. I will leave it at that. Any questions?

Ms. Nogami Streufert: Could I ask a question?

Chair Apisa: Yes.

Ms. Nogami Streufert: Right now, the shoreline setback is 60 feet. Is that correct?

Mr. Hull: It is a minimum 60 feet on erodible shorelines. If you are on a rocky shoreline, it is a minimum of 40 feet. But the 60 feet is a minimum and then on top of that you have to apply a formula that looks at the erosion rate, as well as the size of your property, that could increase that setback well beyond 60 feet.

Ms. Nogami Streufert: But the table that we have here indicates that anything under 120 feet from the shoreline, the minimum setback is now 40 or 50 feet.

Mr. Hull: 40, yes.

Ms. Nogami Streufert: So it has decreased. So you are decreasing it as opposed to—

Mr. Hull: The proposal is to decrease it right now. And, like I said, when we spoke to...the Department does not agree with that decrease.

Ms. Nogami Streufert: Okay.

Mr. Hull: When we spoke to the Councilmembers that introduced the ordinance, like I said, it is a complicated ordinance that once you move one section, it changes another section. I don't think it was quite understood that that was what was being done. As soon as we brought that to

their attention, neither they nor the members of the community had intended for that to be reduced. So ultimately, when we come back with amendments, we will be recommending to re-up it back to the 60-foot minimum and then we don't anticipate much pushback, at least from the introducers.

Chair Apisa: That is just for eroding shorelines?

Mr. Hull: Oh, excuse me, I should say sandy shorelines. The 60-foot stands for anywhere that there is a sandy shoreline. So even if the shoreline is accreting...and if it is accreting, then your setback, more than likely, will be 60 feet unless you have a large lot and another formula, then, applies.

Mr. Ho: Does your setback differ from the State's setback?

Mr. Hull: Yes. Ours is much more robust. The State's setback is 20 feet.

Mr. Ho: Is only 20?

Mr. Hull: Yes.

Mr. Keawe: Okay, so the action, Madame Chair, is to defer? Is that what you are recommending?

Chair Apisa: Well, I think the Planning Department's recommendation is to defer. So are we ready for a decision?

Mr. Lord: I have a question. Deputy Director, has there been any kind of economic impact analysis done on this?

Mr. Hull: On the overall bill for the island, no, quite honestly. I know that several properties have had their real property assessments significantly downgraded since the Shoreline Setback Ordinance has been adopted. So the quick and short of the answer is no. Some of the dynamics that go into that is how much the Shoreline Setback Ordinance now proves as a buffer or, to some, a barrier for further development of the shoreline and how much that impacts the individual property owner; that assessment is one (1) assessment. The assessment that the State is going through right now is how much economic impact our previous allowing of development in the shoreline area is negatively impacting the State because right now, the State is going through assessments of they are in inundation areas, they are in areas that are clearly going to be underwater in the next fifty (50) to sixty (60) years. What can the State and how much is it going to cost the State to either have these property owners move back, shore up the shoreline to protect them; that those negative impacts that those potential seawalls can have on other property areas. It is an interesting case if you take a step back from it and look at it just...the nexus between constitutional property rights every American property owner has to utilize their own property to the maximum of their utility, but secondly, the real world impacts when we are dealing with climate change and sea-level rise, as well as an already existing erosion rate, and the protections that the State and the Federal government are now being placed into as a liability

because we are allowing these folks to develop in those areas. It is a fascinating case and, quite frankly, we are in the middle of it; the County of Kaua'i, Hawai'i is right at ground zero, if you will, for this discussion.

Mr. Lord: It is an interesting issue and, I guess, the problem I had with what I read in the Ordinance, amongst other things, was that it takes something that has so many variables and then tries to take an obtuse approach to solving it with a said formula, you know, rather than doing something more flexible, like creating a discretion for the Planning Department to help decide whether those are necessary or not, you know? I just find that, you know, you take a formula and you are going to apply that everywhere? It just doesn't make any sense to me. Like you said, you got rocky shorelines that don't erode and you have sandy ones that are moving all over the place.

Chair Apisa: So are we...

Mr. Hull: Thank you, Commissioner. Those comments are well-taken, and I can say, I mean, there is always going to be some concern whenever there is discretion allowed. This discretion that we have had for the past two (2) years, we have not borne lightly.

Mr. Lord: I just don't think that the application of a hard and fast formula is going to be your solution.

Mr. Hull: And I think we are in agreement with you there.

Mr. Lord: I think you are opening up a can of worms.

Mr. Hull: Yes, we would be in agreement to a certain degree on that in the sense that some discretion is necessary to ensure that there is some common sense applied to it. Because when farmers were getting hit with those surveys for their fence posts, there was no common sense being applied to that and we had to make the requirement on them with a straight face. So some discretion, definitely, is necessary in the process. At the same time, the Department is acutely aware of the concerns the public and certain watchdog organizations have with ceding that discretion. And that's why I say, for the past two (2) years, the discretion we've borne, we have not borne lightly. When we've generally erred on the conservative side—

Mr. Lord: And the third leg of that stool is the property and the rights.

Mr. Hull: Exactly.

Mr. Lord: At the end of the day, if that house falls in the water, it is their responsibility.

Mr. Hull: Correct.

Chair Apisa: So you are asking for a deferral for...?

Mr. Hull: We are just asking for a deferral.

Chair Apisa: Time period?

Mr. Hull: If the Commission wants to impose a time period, we would ask for possibly the first meeting in June. But, the Department is actually asking for an open-ended deferral until the updated data from UH is received. But that is your prerogative on what–

Chair Apisa: Which is expected in two (2), three (3), four (4) months.

Mr. Hull: Yes, two (2) to four (4) months.

Mr. Lord: I would like to see you do an economic analysis on that.

Ms. Ahuna: (Inaudible)

Mr. Lord: Well, I mean...but you are going to affect values, you are going to affect people's properties, you are going to affect their rights, you should know what that costs. In reverse, if a developer were to be here in front of you and they were going to do something that affected a significant part of the shoreline, you would make them do it.

Mr. Hull: Yes, and I can talk internally with the Department on that, Commissioner. I can be quite honest with you – the Department...while we don't have the recommendation before you and I don't want to speak ahead of the train here, but I can...you can be quite assured we will not be supporting virtually all of these recommendations, quite honestly. Above and beyond potential...beyond the discussion of economic analysis of what this does, the proposal brings it back to the realm of wholly unenforceable, quite frankly, and that is, quite honestly, why we can't support it. We do want that extra time for the updated data and we wanted some extra time to discuss with individuals like Ms. Diamond and the Councilmembers what their intent was, and we are very sure that their intent can be handled within a couple line changes of the Ordinance; it doesn't have to be a whole revamp of the Ordinance. But whether or not we have the resources to contract out to do an economic analysis of it, what this is being proposed, I would be a bit hesitant, quite honestly, Commissioner, but like I said, you can be rest assured our recommendation is not going to be in line with what this is.

Chair Apisa: Okay, any other comments? Are we ready (for) someone to make a motion?

Ms. Ahuna: I'll make a motion to defer this openly with no date until, I guess, the University of Hawai'i's reports are submitted to the Planning Department.

Chair Apisa: Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Zoning Amendment ZA-2018-4: A bill (No. 2675) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Comprehensive Zoning Ordinance.

The proposal amends sections of the Farm Worker Housing Ordinance = *Kaua'i County Council*.

Mr. Hull: The next agenda item we have, Commissioners, is Zoning Amendment ZA-2018-4: a bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance. The proposal amends sections of the Farm Worker Housing Ordinance and you have a Director's Report pertaining to this matter.

To give a brief overview of the Farm Worker Housing Ordinance – I don't believe anybody was here when it was reviewed by the Planning Commission originally – but ultimately, when the Farm Worker Housing Ordinance was adopted, the intent of that Ordinance was looking at the fact that agricultural lands, for better or for worse, have really fallen into the realm of the speculative real estate market, and the farm dwelling density entitlements that each lot of land has, which is no more than five (5), essentially, given the size of the lot, has erased or prevented the ability for farmers to adequately live on their property and farm it. So it was looking at providing additional density above and beyond what that respective property is entitled to for a farm worker housing unit. There were an array of different regulations imposed, and still are imposed, that helped to ensure that it is actually a farm worker living in a farm worker housing unit. Among those are the requirement to demonstrate that two (2) years prior to the application for a farm worker housing, the farm had made a gross sales income of \$35,000 a year as demonstrated on their Schedule F tax forms with the IRS. They are also required to be enrolled in the Agricultural Dedication Program with the County of Kaua'i Real Property which does annual inspections to ensure that there is bona fide farming going on on a respective property. They are also required to submit a farm plan to the respective Planning Commission for its review and assessment of the adequate or inadequate needs of housing on a respective agricultural lot. So that was passed several years ago.

To date, the Department has received four (4) farm worker housing petitions. The Planning Commission ultimately approved three (3) and one (1) final one was withdrawn. When this Ordinance was passed, there was a lot of concern and, somewhat, leering over providing additional density within the agricultural lands because the respective Planning Commission and the respective County Council at the time and the Department had seen the proliferation of gentlemen estates across agricultural lands and the abuse of the farm dwelling entitlements on ag lands being used for anything but farm dwelling. So that is why some of those regulations I just mentioned were imposed; to ensure it is a bona fide farmer living within the farm worker housing unit, as well as the Council imposed a date of August 2010 that the farms must have had agricultural dedication and must have been subjected to a CPR prior to that date of August 2010. When it was drafted, it was to say that it had to have received those two (2) things prior to the adoption of the Ordinance, and that was a way just to say we are not going to allow individuals to get more farm/ag dedications, we are not going to allow any new CPR units to get it, as a way just to throttle it to make sure that, you know, it is kind of a pilot project to see how many of these things are going to come in (and) what the abuse is like. Since that time, like it's mentioned, we haven't had many and we haven't seen any abuse of it. So in particular with the ag dedication, if they are meeting the ag dedication, regardless of it being done prior to 2010 or after 2010, these are farmers, so the proposal is to remove that date is all; just remove the date from those two (2) requirements: the CPR establishment and the agricultural dedication. It is a

relatively minor change that we do not anticipate having any negative impacts or incur any additional abuse, but will allow, potentially, additional farmers that are bona fide farmers to qualify for the program.

And that is it in a nutshell, so if you folks have any questions.

Chair Apisa: Questions?

Mr. Lord: So your take on it, overall of how the Ordinance works, it's had its intended effect?

Mr. Hull: I would say it has worked in some cases. There are many out there, I will say, that disagree that it didn't have its overall intended effect because we would have had more farm worker housing units if it did, and some would argue that it is too strict. The Department's position is...and for the most part, the objection is the \$35,000. That – some farmers have had concern with about being able to demonstrate that, but the Department has been firm on stating that we have to rely on that \$35,000, we have to rely on somewhat of a high threshold because if we bring that threshold down lower, it does allow for the abuse, it does allow for the proliferation of non-farm dwellings. So, like I said, the Department is in agreement that the Farm Worker Housing Ordinance has worked. It hasn't provided as much housing as some had hoped for, but it has provided some and it has ensured that the entitlement is not abused by those that would seek to abuse it, essentially.

Mr. Lord: So is the intent, by removing the date, to open up some more property for that purpose?

Mr. Hull: I can say I, personally, have had encounters with at least three (3) members of the public – farmers, I should say – who attempted to apply sometime in the past four (4) or five (5) years that would have qualified if for no other reason that their Ag Dedication Program started after 2010. So these guys would have made it, quite honestly. Ultimately, they would have made it to come before this Body for your discretionary review, but they would have made it through the SIV for the review and, for no other reason, I had to turn them away at the counter. So I know those individuals more than likely knocked on the County Council's door to say hey guys, can we change this, and here we have the proposal for which the Department has no objections.

Ms. Nogami Streufert: But the amount of \$35,000 of agricultural profit or work today, in ten (10) years, may not mean anything at all. So is there a sliding scale that includes inflation? Or are you intending to have \$35,000 in perpetuity?

Mr. Hull: Under the existing ordinance, there is no sliding scale. If it needs to be revisited at the time or at a subsequent time, I think the Department would be open to that, but it has been on the books for about six (6) years, seven (7) years now for Kaua'i and it has been on the books...it wasn't something that Kaua'i came out of on its own, it actually took that from Maui County, and that has actually been a requirement for at least over a decade beyond the Kaua'i Farm Worker Housing Ordinance.

Ms. Nogami Streufert: It was a lot of money at that time; I mean, it still is a lot of money, but it is not as much as it was before. So there is the question – another ten (10) years, do we still keep that, or do we just wait and then decide in ten (10) years?

Mr. Hull: It is a valid question and concern, I think, Commissioner. The Department isn't, at this point, ready to introduce a proposed sliding scale, but it is worth a discussion if you feel so.

Ms. Nogami Streufert: I wouldn't know how you would put that in there.

Mr. Lord: Well, you would tie it to something like the CPI.

Chair Apisa: Right, for inflation.

Mr. Hull: There was some discussion of that, I would say, at the hearings at the County Council back in 2010; where there was discussion of the CPI, as well as one of the indexes used more prevalently throughout Hawai'i. Ultimately, the Council decided it wasn't appropriate to handle at the time and, if necessary, to return to the Ordinance should it become an issue.

Mr. Keawe: As it is now, Ka'āina, it basically is three (3) items – one is to remove the August 16, 2010 date, \$35,000 for two (2) years, and the ag designation [*sic*].

Mr. Hull: Oh no, no. As it stands now, it is strictly to remove the August 2010 date for the ag dedication and remove the August 2010 date for the creation of the CPR.

Mr. Keawe: Right, but you still have the \$35,000 (inaudible).

Mr. Hull: I apologize, Commissioner. Yes, you still have the requirement that the \$35,000–

Mr. Keawe: \$35,000 for two (2) years.

Mr. Hull: You still have...and it is not to take away the ag dedication requirement. It is just to take away the August 2010 date. It still says you got to be ag dedicated and you cannot CPR later on around the farm worker housing unit.

Chair Apisa: Any other questions? Or are we ready to entertain a motion? Don't everyone speak at once.

Mr. Lord: I will make a motion that we approve the proposal to amend sections of the Farm Worker Housing Ordinance, Zoning Amendment ZA-2018-4 related to Bill No. 2675.

Ms. Ahuna: Second.

Chair Apisa: So you are amending that we remove that August 2010 date for the ag dedication and the creation of CPR units?

Mr. Lord: That is correct.

Chair Apisa: Second?

Mr. Keawe: Yes; Kanoe.

Chair Apisa: Oh. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

So I think we go back– Oh, go ahead.

GENERAL BUSINESS MATTERS (Continued)

Petition to Modify Condition Nos. 1 and 2 of Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4; Exhibit List; Exhibit “A” = Maui Asphalt X-IV, LLC. [Deferred 1/9/18]

Mr. Dahilig: Yes, Madame Chair, so if we can return back to Item I.5.a. Dale has been working with the applicant concerning some of the items that have been discussed here at the Commissioners’ table. There are some additional conditions that have been worked up for discussion to try to give, I guess, a point of discussion for the Commissioners to see if this, maybe, is a path to allay many of the concerns that have been raised. So if I could ask Dale to present those additional conditions to the Commission.

Mr. Cua: Good afternoon, Commissioners. Maybe what I will start off with is to read the Department’s recommendation as originally shown on the Director’s Report. The recommendation would have been to approve the extension of time, and it would involve an amendment to Condition No. 2 and leave Condition No. 1 as is. Condition No. 2, on page 4 of the Director’s Report, would read, “[t]he operation of this facility may continue until November 11, 2020. At the conclusion of this period, the foregoing permits shall be automatically canceled and the Applicant shall restore the project site as it was prior to occupancy of the site. Any site improvements that were constructed shall be immediately removed. Notwithstanding the foregoing, if prior to the expiration date set forth above, the Applicant has exhausted its efforts to acquire a lease for property with the necessary size and zoning, the Applicant may petition this Commission for either an extension of the said permits OR to secure permits without an expiration date subject, however, to the landowner’s consent.” So that was the original recommendation. As a result of the discussions, there is an amendment to Condition No. 2 for an 18-month extension as opposed to a 36-month extension as originally requested. The 18-month extension would take it to May 11, 2019. As a result, the first sentence of Condition No. 2 would read, “[t]he operation of this facility may continue until May 11, 2019.”, and the rest of the condition would remain the same. There would be an additional condition imposed to the permits. This would be Condition No. 11 and Condition No. 11 would read, “[t]he Applicant shall not process asphalt on days where, at the beginning of the work day, the prevailing winds are blowing Kona/inland. For work that has already commenced and where the prevailing wind shifts to Kona and then generates any complaints, the Applicant shall shut down its operations as soon as possible to mitigate any exposed trenches at a job site to assure it is covered and then cleared for safety.” That would be the additional condition.

Mr. Dahilig: I think we have the testing item. I guess we would add a condition—

Mr. Cua: Oh, right, yes.

Mr. Dahilig: A Condition No. 12 that would require one (1) additional test prior to the annual test that the Department of Health currently requires as part of its protocols. So that would have to be completed before the test that was...so one (1) year from the current test is 11/'18, so they would be required to have one (1) test between now and 11/'18.

Mr. Cua: Right.

Mr. Keawe: What kind of test?

Mr. Dahilig: It would be an air quality test again.

Mr. Keawe: Similar to what we already got?

Mr. Dahilig: Yes, similar to what you already got.

Ms. Ahuna: Yes, instead of the requirements of an annual, it would be additional.

Mr. Dahilig: It would be one (1) additional test between now and then because the permit would run until May 11th. The test, then, would carry over to the Department of Health around now, and it wouldn't make periodic sense to come in and ask for another test three (3) months before, so that is why we think that having one between now and November makes sense.

Ms. Ahuna: Can we just add one little thing? Like, just so that each time a test is done that the results are automatically given to the school.

Mr. Dahilig: I don't think we have any problems including that as a recommendation. We probably should, when the applicant does come forward to concur with the conditions, see whether or not they are okay with that. But I don't see a problem with that.

Ms. Ahuna: Only because sometimes schools don't follow, you know, public notices and so forth.

Mr. Dahilig: Right. And just to be clear to the Commissioners, in going back to that discussion, again, of health and safety gases and a nuisance, it is very hard for us as the Department to recommend expanding the spectrum of health and safety gases beyond what the Department of Health and the EPA mandate as that bandwidth of testing.

Ms. Ahuna: Right.

Mr. Dahilig: So that's why, you know, as much as we had a discussion concerning wanting to look at other types of gases, it is hard for us to create a scientific nexus from a departmental standpoint to say test this gas or test this gas.

Ms. Ahuna: No, I am just asking that the results of the normal Department of Health test be given to the (school) immediately upon results because...I mean, the schools don't know when they do the test and they are kind of out of sight, out of mind, you know? Just to educate them on the results.

Mr. Dahilig: Specifically to Waimea Canyon or you want it to go to, also, Waimea High School?

Ms. Ahuna: Waimea...like, any of the existing schools around there.

Mr. Dahilig: So maybe all Waimea complex schools.

Ms. Ahuna: Yes.

Mr. Dahilig: Okay.

Chair Apisa: Define "immediately". Maybe promptly?

Ms. Ahuna: Yes, promptly following.

Mr. Dahilig: Okay.

Mr. Ho: Could I have a question with Mike? Not to put the Department in the middle of this, but what is the recourse for the school if they continue?

Mr. Dahilig: The recourse for the school is that if there is...well, let's take it one step back. The premise that we are all under the thought of is that if they go back to this mainland material, there shouldn't be any problems; odor, right. That is the presumption, and so if that is the case, and it is a hypothesis that everybody thinks is the case, we shouldn't have any problems going in. The shutdown protocol as suggested is meant to provide a safeguard to the school that once there is an indicator of a problem going on, that there is an attempt to contain and stop the continued emission, so that is where that condition comes in. Also, with respect to the Kona wind direction, that there is a protocol for that, also. The dilemma here is that we can't predict when a Kona wind day is going to be, other than a couple days out, and at the same time, it is based off of what is a human observation, not anything that any type of automatic trigger is going to set off an alarm, so that is why the desire is to want to have something in place for the school to call these guys and say hey, we are smelling it, and therefore, they need to figure out how to stop the emission right away. So that is what we have put in place.

The shortening of time, also, to eighteen (18) months is meant for us to also have the Commission have the opportunity that if there are any complaints during that time or anything that is identified, that we can have the analysis brought to the Commission on whether or not this should continue at the same site beyond eighteen (18) months.

Again, it is built on that premise, again, that if they continue with their representation that they are going to use mainland material that this should not occur anymore, but we are building upon that presumption from the beginning.

Chair Apisa: Go ahead.

Ms. Nogami Streufert: We are building on the assumption, also, that these plumes or the smell or non-smell, that the gases are non-harmful to the kids?

Mr. Dahilig: We are building that presumption that the agencies responsible for identifying what gases those are and what levels are acceptable are met.

Ms. Ahuna: Department of Health?

Mr. Dahilig: Department of Health and the Environmental Protection Agency. Just to reiterate, Commissioners, I think we all share the common concern regarding the health and safety of our keiki is paramount here, so the balancing here is meant to be very sensitive to that while trying to understand the competing, I guess, community need for this material to keep our transportation system in working shape.

Chair Apisa: So are...call up the applicant to confirm they would be agreeable to the new conditions. Again, for the record, starting anew, identify yourself.

Ms. Nishimitsu: For the record, Lorna Nishimitsu, attorney for Maui Asphalt, accompanied by Erik Rhineland. Yes, we were provided with the suggested recommendations – the conditions – that would go with an extension at a shortened time, shorter than we had requested, and the applicant is willing to accept those conditions.

Chair Apisa: Thank you.

Mr. Dahilig: I guess given our written and oral recommendations as amended, Madame Chair, we present the report with a recommendation to approve with those twelve (12) conditions.

Chair Apisa: Any further discussion, or is there a motion to move forward with this?

Mr. Keawe: One last one. Can I hear the ones that were amended one more time?

Mr. Dahilig: Yes. Dale, if you would.

Mr. Cua: The approval to the extension request would involve an amendment to Condition (No.) 2 and essentially, the expiration date would be May 11, 2019, and then there would be two (2) additional conditions imposed to the permits. Condition No. 11 is basically identifying a protocol where they will not process any asphalt where, at the beginning of the work day, the prevailing winds are blowing Kona, and for work that has already commenced and where the prevailing winds shifts to Kona and then generates any complaints, the applicant shall shut down its operations as soon as possible to mitigate any exposed trenches at a jobsite in order to assure

it is covered and then cleared for safety. Condition No. 12 would be that additional air quality testing prior to November 11, 2018, and that the results of the testing shall be promptly provided to representatives of the nearby Waimea complex schools at the time the report is submitted to the State DOH.

Chair Apisa: Alright, thank you. Any further discussion or questions on this? Or do we have a motion? Commissioner Lord, are you ready to...

Mr. Lord: Oh boy, okay. I will make a motion that we approve the petition to modify Condition Nos. 1 and 2 of the Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4 with the addition of the amended conditions and the change in the date to...what was that? Item No. 2 in the...of course I can't find it. Condition No. 2 – changing the date to May 11, 2019, along with the other conditions as noted by Staff.

Chair Apisa: Do we have a second for that?

Mr. Keawe: I will second it.

Chair Apisa: Ready to vote? All in favor? (Voice vote) Any opposed?

Mr. Dahilig: Do you want to do a roll call?

Chair Apisa: I think we better do a roll call.

Mr. Dahilig: Okay. The motion on the floor is to approve amendments to Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4 to change Condition No. 2 to include an extension for eighteen (18) months, as well as the addition of an additional Condition (No.) 11 and an addition of Condition No. 12 relating to shutdown protocols and additional testing.

Commissioner Ahuna.

Ms. Ahuna: Aye.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Aye.

Mr. Dahilig: Commissioner Lord.

Mr. Lord: Aye.

Mr. Dahilig: Vice Chair Streufert. Commissioner Keawe.

Chair Apisa: Did you...

Ms. Nogami Streufert: On the assumption that the Department of Health has determined that this is safe, aye.

Mr. Dahilig: Okay. Commissioner Keawe.

Mr. Keawe: Aye.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Aye.

Mr. Dahilig: Six (6) ayes, Madame Chair.

Chair Apisa: Motion is approved [*sic*] 6:0.

Mr. Dahilig: Thank you, Madame Chair.

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihu'e, Kaua'i, Hawai'i 96766 on Tuesday, February 13, 2018.

Mr. Dahilig: That is all the business items for the Commission today. I have circulated, for the Commission's entertainment, the on deck sheets for the upcoming meetings. You will notice that we are a bit lean in terms of permit intake. I will mention that the next Commission meeting on February 13th, we do have, I guess, the return of the bike path, so I think that will be at that meeting, as well as a couple clean up items on permitting actions. Looking forward, based off of scheduling the second meeting in February and the first meeting in March, it looks like we may be able to avoid having to schedule meetings for the Commission for those two (2) meetings just because we are trying to consolidate the action items. Don't hold me to it, but I think just looking towards that, it looks like a very high likelihood that we will be able to not call you in for the second meeting in February and the first meeting in March.

Chair Apisa: Commissioner Ahuna, you okay with that?

Ms. Ahuna: What is the date? February, the 13th?

Mr. Dahilig: February 13th. So we will have a next meeting, but the following meeting...normally scheduled meeting after that and then the first meeting in March looks like we may not need to call you guys in.

Mr. Lord: Madame Chair, I am going to be traveling on the mainland.

Chair Apisa: On February 13th?

Mr. Lord: On February 13th, yes.

Chair Apisa: And Commissioner Ahuna, will you...? Commissioner Keawe will not be here. Ahuna?

Ms. Ahuna: I think I am here. Yes.

Chair Apisa: Just to make sure we have a quorum, Commissioner Streufert and Commissioner Ho, you will be here February 13th?

Mr. Ho: February 13th I will be here.

Chair Apisa: We should have a quorum.

Mr. Dahilig: We have a list...yes, okay.

Chair Apisa: Alright, thank you.

Mr. Dahilig: With that, Madame Chair, that is all I have for Announcements, unless you have anything further.

Chair Apisa: No further announcements.

ADJOURNMENT

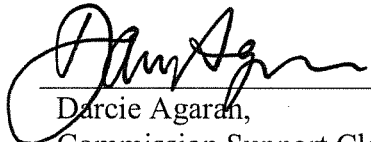
Chair Apisa: Do we need a motion to adjourn?

Mr. Dahilig: Not really.

Chair Apisa: No, okay. The meeting is adjourned.

Chair Apisa adjourned the meeting at 12:42 p.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.